

United States
Circuit Court of Appeals
 For the Ninth Circuit.

Transcript of Record.
 (IN TWO VOLUMES.)

JOSEPH E. WISE and LUCIA J. WISE,

Appellants,

vs.

CORNELIUS C. WATTS and DABNEY C. T. DAVIS, Jr., JAMES E. BOULDIN, JENNIE N. BOULDIN, DAVID W. BOULDIN and HELEN LEE BOULDIN,

Appellees,

and

CORNELIUS C. WATTS and DABNEY C. T. DAVIS, Jr.,

Appellants,

vs.

JOSEPH E. WISE and MARGARET W. WISE,

Appellees,

and

JAMES E. BOULDIN, JENNIE N. BOULDIN, DAVID W. BOULDIN and HELEN LEE BOULDIN,

Appellants,

vs.

JOSEPH E. WISE and MARGARET W. WISE,

Appellees,

and

SANTA CRUZ DEVELOPMENT COMPANY, a Corporation,

Appellant,

vs.

CORNELIUS C. WATTS, DABNEY C. T. DAVIS, Jr., JOSEPH E. WISE, MARGARET W. WISE, JENNIE N. BOULDIN, DAVID W. BOULDIN, and HELEN LEE BOULDIN,

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VOLUME II.

(Pages 321 to 647 Inclusive,)

Upon Appeals from the United States District Court for the District of Arizona.

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Upon Appeals from the United States District Court for the District of Arizona.

QUITCLAIM DEED.

THIS INDENTURE, Made the 24th day of April, in the year of our Lord One Thousand Nine Hundred and Seven between Wilbur H. King of Hokins County, Texas, the party of the first part, and Joseph E. Wise of Santa Cruz County, Territory of Arizona, the party of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One Thousand Dollars of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released and quitclaimed, and by these presents does convey, remise, release and quitclaim, unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest, claim and demand which the said party of the first part has in and to the following described real estate and property situated in the County of Santa Cruz and Territory of Arizona, to wit:

That certain Private Land Claim, known and called "Baca Float or Location No. 3," containing one hundred thousand (100,000) acres more or less, being one of the five blocks or tracts of land selected by the heirs of Luis Maria Baca under the provisions of an act of the Congress of the United States of date June 21st, 1860, and set forth in full in Vol. 12 U. S., Statutes at Large, page 72; said tract or parcel of land being more particularly bounded and described as follows, to wit: Commencing at a point one

mile and a half from the Salero Mountain in a direction north 45 degrees east of the highest point of said mountain, running thence from said beginning point west twelve (12) miles, thirty-six (36) chains and forty-four (44) links; thence south twelve (12) miles, thirty-six (36) chains and forty-four (44) links; thence east twelve miles, thirty-six (36) chains and forty-four (44) links; thence north twelve (12) miles, thirty-six (36) chains and forty-four (44) links to the place of beginning.

and also all of the right, title and interest acquired by said Wilbur H. King under and by virtue of a certain sheriff's sale made by the sheriff of Pima County, Arizona Territory, under a certain execution tested July 3d, 1895, [284] issued upon a certain judgment rendered on May 2d, 1895, by the District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima, in favor of John Ireland and Wilbur H. King and against Leo Goldschmidt, Administrator of the estate of David W. Bouldin, deceased.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise appertaining, and all the estate, right, title, interest and claim whatsoever, of the said party of the first part, either in law or in equity, in possession or expectancy to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the

first part has hereunto set his hand and seal the day and year first above written.

W. H. KING. (Seal) [285]

Defendants Wise Exhibit 25.

Defendants Wise introduced in evidence a deed dated and acknowledged the 8th day of April, 1907, and recorded May 2, 1907, from Mrs. A. M. Ireland, the widow of John Ireland, to Joseph E. Wise, conveying all of the grantor's right, title and interest, claim and demand, to Baca Float No. 3 by the 1863 description, which was specifically set forth in the deed.

Defendants Wise Exhibit 26.

Defendants Wise offered in evidence a deed dated the 5th day of October, 1914, between John Nelson, sheriff of the county of Pima, State of Arizona, and Joseph E. Wise, executed under the order of the Superior Court of Pima County, in the matter of the case of Ireland and King vs. David W. Bouldin, Leo Goldschmidt as administrator.

Counsel for defendants Bouldin and counsel for plaintiffs objected to the introduction in evidence of said instrument on the grounds heretofore made to the introduction in evidence of the transcript of record in the case of Ireland and King vs. Bouldin and Leo Goldschmidt, administrator, and supplemented with the further objection that the Court had no power to order the sheriff of Pima County to execute the said deed.

Said instrument was received in evidence subject to said objection, marked by the clerk "Defendants Wise Exhibit 26," and is set forth in the appendix

which is part of this record.

Defendants Wise Exhibit 27.

Defendants Wise offered in evidence certified copy of the record of a deed from Teofila Baca, daughter of Jose Baca, deceased, and Felix Baca, her husband, to Marcos C. de Baca, dated August 20, 1913, acknowledged August 23, 1913, and recorded August 29, 1913, which without the statement of parties, [286] *habendum*, signatures and certificates of acknowledgment and record, and after describing the property conveyed as Baca Float No. 13, by the courses and distances of the 1863 location, reads as follows:

"being the same premises that descended to the parties of the first part as children of Jose Baca, who was the son of Juan Manuel Baca, who was the son of Antonio Baca, who was the son of Luis Maria Baca, and one of the heirs to whom said grant was made by the act of Congress of the United States of America on the 21st day of June, 1860."

Plaintiffs and defendants Bouldin and Santa Cruz Development [287] Company renew at this time the objections they heretofore made as to all the deeds which purported to convey the interest of Antonio Baca.

The COURT.—Received subject to the objection.

Defendants Wise Exhibit 28.

Defendants Wise offered in evidence certified copy of the record of a deed from Ciriz Salazar to Joseph E. and Jesse H. Wise, dated and acknowledged the 8th day of August, 1913, and recorded

September 15, 1913, which without the statement of parties, *habendum*, covenants, signatures and certificates of acknowledgment and record, and after describing the property conveyed as "Baca Float or Location No. 3" by the courses and distances of the 1863 location, reads as follows:

"Being the same premises that descended to the parties of the first part hereto as children of Nicolasa C. de Baca who was the daughter of Juan Antonio de Baca, who was a son of Luis Maria C. de Baca to whom said grant was made on the 21st day of June, by an act of Congress of the United States of America."

Plaintiffs and defendants Bouldin and Santa Cruz Development Company made the same objection as to all other deeds which purported to convey the interest of Antonio Baca, or of his descendants.

Received subject to said objection.

Testimony of W. F. Skillman.

The deposition of W. F. Skillman, a witness on behalf of defendant Joseph E. Wise, which had been duly taken and duly returned to this Court, was then introduced in evidence by defendant Joseph E. Wise. Said witness having been duly sworn testified as follows:

My name is W. F. Skillman; age 47 years; residence is [288] Sulphur Springs, Texas. I knew Wilbur H. King during his lifetime; I met him first at Sulphur Springs, Texas, about the year 1880, and knew him until his death. Most of that time he resided or made his headquarters at Sulphur Springs, Texas. Wilbur H. King is dead; he died at Sulphur

(Testimony of W. F. Skillman.)

Springs, Texas, on or about the 10th day of October, 1910. I was the administrator of his estate and was appointed to the position by the Probate Court of Hopkins County, Texas. I was appointed administrator of said estate October 13, 1910; the administration was made permanent by the January term of the court, 1911. I have heard Wilbur H. King say that he had been married and that his wife was dead. I never knew his wife. He never lived with a wife here, and it was always the common opinion that he had been married and his wife was dead. Her death occurred sometime prior to his moving to Sulphur Springs, Texas. I do not know where she died, but from his conversation I formed the opinion that he married sometime soon after the Civil War, and that his wife did not live very long after their marriage. I have heard Wilbur H. King say that he and his wife had one child born to them and that the said child died during babyhood. He never had any child with him during my acquaintance with him. I do not know when nor where the child died. I never knew of any child or natural heir that Wilbur H. King had, except as above stated. When I was ready to distribute his estate, Mrs. Nora B. Bruner, of Corsicana, Texas, a relative by marriage, to the said Wilbur H. King, made affidavit that he died without children, and on this proof, I distributed the funds that I had in my hands as administrator of his estate, to his brothers and sisters and their heirs. I never was acquainted with John Ireland. If Wilbur H. King and John Ireland were law partners, I never [289] knew it.

Defendants Wise Exhibit 29.

Defendants Wise then offered in evidence the opinion of Secretary Lamar, of date June 15, 1887. This opinion is reported in 5 L. D. 705, and is the same as Plaintiffs' Ex. K-13.

Defendants Wise Exhibit 30.

Defendants Wise offered in evidence a letter from John W. Cameron to Levi H. Manning, Surveyor General of Arizona, dated June 9, 1893, which reads in part as follows:

"An amended application was filed, and the Land Office on May 21, 1866, issued instruction for the survey as amended. It is this location that should be surveyed. * * *

In April, 1864, Commissioner Edmunds sent instructions to the Surveyor General of Arizona to make survey, but required the owners to advance the money to pay for the same, a condition not to be found in the act, nor in any law of Congress. In 1866 another order to survey the corrected location was made, but the same condition was imposed. The validity of the location was passed on by the Secretary of the Interior. * * * The Government solemnly contracted that the Surveyor General should survey the claim whenever required by the heirs or their assigns. They have required it, and it not having been done, they now require it again.
* * *

Now therefore, in accordance with the act of Congress, and as one of the owners of this claim

Baca No. 3, and representing all of them, I hereby require of you to make survey of said amended location, in accordance with the law and your duties thereunto."

Defendants Wise Exhibit 31.

Defendants Wise offered in evidence a letter from S. M. Stockslager, Commissioner of the General Land Office, to John Hise, Surveyor General of Arizona, dated March 5th, 1889, denying application of John C. Robinson for a survey of the 1866 location, but ordering a hearing to determine whether it was known to be mineral when selected. [290]

Request by Defendants Wise That Counsel for Plaintiffs Produce a Certain Statement of Prudencio Baca, Son of Luis Maria Baca.

During the progress of the trial and before Marcos C. de Baca, a witness on behalf of defendants Wise, was called and examined in the case, Mr. Franklin requested the plaintiffs to produce the original statement made by Prudencio Baca in 1879 as to the heirs of Luis Maria Baca.

Mr. KINGAN.—We never had the original statement of Prudencio Baca. I never told Mr. Franklin we had the original statement. We have a copy certified by the clerk of the court, which I understand Mr. Franklin has also.

Mr. FRANKLIN.—Mine is not certified to.

Mr. KINGAN.—If he hasn't it, he could get it as easily as we could. It is a public record. We have no original statement of Prudencio Baca, and I never said so.

Mr. FRANKLIN.—Then I misunderstood about

it being an original. You have a certified copy?

Mr. KINGAN.—Surely, we have a certified copy of the court record up there, which is open to the world, which he can get as well as we can.

The COURT.—I don't know of any authority that would require them to do that. I don't think I shall require them to do that.

Testimony of Marcos C. De Baca.

MARCOS C. de BACA was called as a witness on behalf of the defendants Joseph E. Wise and Lucia J. Wise, Jesse H. Wise and Margaret W. Wise, and having been first duly sworn was examined and testified as follows:

Direct Examination. [291]

My name is Marcos C. de Baca; I will be fifty-eight years old on the 25th of next month; I live in Bernalillo, New Mexico; I have lived there for the last ten years; I have lived all my lifetime in the State, heretofore Territory of New Mexico; I was born at Pena Blanca, New Mexico. By profession I am almost everything from a small farmer to a poor lawyer. I am admitted to practice before the Courts of New Mexico as an attorney at law; I have been a member of the profession since 1891. I am a descendant of Luis Maria Baca—Luis Maria Cabeza de Baca—I am a great grandson. I was acquainted with Tomas Cabeza de Baca in his lifetime; he was my father; my attention is called to an ancient deed being marked Plaintiffs' Exhibit "C," and I am directed to look at the signature of "Tomas C. de Baca" to that deed; that is the signature of my father. My grandfather was Juan An-

(Testimony of Marcos C. de Baca.)

tonio Cabeza de Baca. My attention is directed to the fact that there is a Juan Antonio Cabeza de Baca recited in the deed of 1864, that he was dead at that time, and Tomas C. de Baca is recited as his son. That Tomas C. de Baca was my father. I will state right now that my father's name was Francisco Tomas de Baca, and he used to sign his name many times "Francisco," and sometimes he used to sign it "Tomas Baca" alone. I know who the descendants of Luis Maria Cabeza de Baca are. During the past years—since 1875—I have made a study as to who the sons of Luis Maria Cabeza de Baca were. The particular reason when I started it was because I wanted to keep a full record of the whole family. That was the first object of it and afterwards it was for the object of finding out the heirs of Luis Maria Cabeza de Baca in some partition suits that were brought against the heirs for some land that he owned in New Mexico. There was filed in the partition [292] suit for Baca Location No. 1 a family tree of Luis Maria Cabeza de Baca. I think I have a copy of that paper.

Mr. FRANKLIN.—I will ask, your Honor, some more preliminary questions to show the knowledge and source of knowledge of this witness and produce the authorities at 1:30.

Q. Mr. Baca, you are the same Marcos C. de Baca to whom divers and sundry persons who claim to be descendants of Antonia Baca made certain deeds that I put in evidence, being exhibits in this case? You have heard me read them? A. Yes, sir.

(Testimony of Marcos C. de Baca.)

Q. We will come to the following named persons and state whether or not you know them: First, Juana L. Baca, Preciliana Baca, Esteban Baca, Francisco Baca, Luciana Baca, Pilar Baca and Inez Lucero who was the daughter of Epigmenia Baca.

Mr. KINGAN.—We do not like to object, but he is certainly leading the witness, putting names in the witness' mouth.

Mr. KRANKLIN.—Your Honor, these people all deeded to him in a deed, and I am asking him if he knew the people who deeded to him.

The COURT.—The objection is that you are stating that someone is an heir.

Mr. FRANKLIN.—Your Honor, these people all out. I was just simply going a little more in detail in regard to these people who signed the deed.

The COURT.—That is objectionable but I think it is immaterial.

Mr. CAMPBELL.—May we have an objection to all this line of testimony the same as we made to the deeds; that it is immaterial, incompetent, for the reason that he claims under the deed of 1864 from the Baca heirs and the deed of 1871; and [293] therefore, he is bound by the recitals as to who the heirs are.

The COURT.—The objection is overruled and I will hear you in argument.

Mr. NOBLE.—May we have the same objection and exception, if the Court please?

The COURT.—On the part of the plaintiffs?

Mr. NOBLE.—Yes, sir.

(Testimony of Marcos C. de Baca.)

Mr. BREVILLIER.—And on the part of the Santa Cruz Development Company.

To which ruling of the Court, the plaintiffs, the defendants Bouldin, and the defendant Santa Cruz Development Company, then and there duly excepted.

Question was repeated to the witness as follows:

Q. We will come to the following named persons and state whether or not you know them: First, Juana L. Baca, Preciliana Baca, Esteban Baca, Francisco Baca, Luciana Baca, Pilar Baca and Inez Lucero; do you know those people?

WITNESS.—I know them well.

Question. Are they related to you in any way?

A. Yes, sir. Juana Lucero Baca is the widow and Preciliana and the others are children of Jose Baca.

Witness further testified: I did not know Jose Baca in his lifetime; he was related to me. I did not know the father of Jose Baca in his lifetime.

Question. Have you had any conversation with the children of that Jose Baca or with Jose Baca himself or with any other members of the family as to who the father of Rose Baca was?

A. I had a conversation with my father and with Jose Baca himself.

The witness was here temporarily withdrawn.

Before the witness was recalled the following proceedings [294] took place in open court and the following requests and statements were made by respective counsel and by the Court in regard to the purported statement of Prudencio Baca, a son of

(Testimony of Marcos C. de Baca.)

Luis Maria Baca, to wit:

Mr. FRANKLIN.—Then, your Honor, I am going to make a request of the Court, and that is I am going to ask the Court to give me time within which to file as part of the evidence in this case a certified copy of the statement of the heirs that was filed in that lawsuit in New Mexico against Prudencia Baca, which certified copy these gentlemen have now. I never knew, I was under the impression he had an original paper; I did not know what that was or where it came from. I think I can hardly be charged with notice and knowledge of everything that is in the State of New Mexico. My object and purpose being, of course, to put that paper in. In a matter of this kind I think the Court desires to get at the real and correct facts, and it is a part of the testimony of this witness. If there are any documents to be had on this subject in any court, if the gentlemen will only name the court and name the proceeding where they might have been, I will get a certified copy and file it.

Mr. NOBLE.—With respect to the specific statement Mr. Franklin makes reference to, he is entirely in error in thinking it was filed in any proceeding. The statement that he has referred to is the statement prepared by one of the lawyers in a lawsuit—not made by any witness—made by an interested party, one of the lawyers—that paper right there.

Mr. FRANKLIN.—Mr. Kingan told me that he had, as I understood him, that he had a paper signed by Prudencio Baca, a son, in 1878. He asked me

(Testimony of Marcos C. de Baca.)

whether I would consent, or rather, admit the fact that he died, that he was dead. I found [295] out that he was dead; he died in 1882. I told Mr. Kingan I would agree to this fact, that Prudencio was dead, which would make his statement as an ancient document admissible.

Mr. KINGAN.—You misunderstood what I had, Mr. Franklin. I told you I might want to use a statement made by Prudencio Baca, and that, if we did want to, would you stipulate that he was dead. That is what I asked you; and you said that you would write up there and find out if he was dead, and if so, you would stipulate. That is the extent of our stipulation. I never told you that I had the original paper. I told you that I had a paper that I might want to introduce. You may have misunderstood it.

Mr. FRANKLIN.—I intend to ask if there is anything anywhere in New Mexico on this subject, for an opportunity to get it.

Mr. BREVILLIER.—May I make a slight suggestion. I suppose Mr. Franklin will show us the paper of which he has a copy and of which he asks leave to file a certified copy. This is the first time I have ever heard of it.

Mr. FRANKLIN.—I cannot say now. This was given to me by Mr. Marcos Baca. Whether it was filed in that case or not filed in that case I am not sure. I am perfectly willing to show you what I have.

The COURT.—Upon objection of all counsel in

(Testimony of Marcos C. de Baca.)

this case I overruled an application for a continuance made by one of the defendants, and I do not feel like continuing the hearing. At the same time, I can readily see if you introduce testimony a week from now, or two weeks from now, after these gentlemen have all returned to their respective homes and all the witnesses have returned, it might cause a reopening of the case. I am willing that counsel representing any of the defendants [296] may file certified copies of papers that were not certified, or in any way to perfect the record, but I could not hold the case open for further testimony, after having declined to continue it on application of one of the defendants.

The witness Marcos C. de Baca resumed the stand and further testified as follows:

Direct Examination Continued.

I was well acquainted with some of the sons of Luis Maria Baca in their lifetime; I was personally acquainted with the following sons of Luis Maria Baca, namely: Prudencio Baca, Jesus Baca the first, Jesus Baca the second, Josefa Baca y Lucero, Domingo Baca and Manuel Baca. None of these sons is living at the present time. Every one of them is dead. Prudencio Baca died in March, 1882. I could not state the time when the two Jesuses died; they died in Sandoval County, about probably in '68 or '70. I am not positive though, but they have been dead a number of years. Josefa Baca y Lucero was the daughter, she died in 1888. I am not positive when Domingo Baca died, I think he died

(Testimony of Marcos C. de Baca.)

in 1892. Manuel Baca died in 1905. I had conversations with four of the deceased sons and daughters above mentioned, all except the two Jesuses. I had conversations with Prudencio, with Josefa Baca y Lucero, with Domingo Baca and Manuel Baca.

Question. Now, in the conversation with Prudencio Baca, was anything said by him in regard to who the sons and daughters of Luis Maria Baca were?

Mr. NOBLE.—I would like to interpose an objection at this point. We are not interested in knowing who the sons and daughters of Luis Maria Cabeza de Baca were except for one reason; to see if they had a right to give these deeds to Mr. Baca, who in turn had given them to Mr. Wise. This is the whole question. Now, before this witness can answer that question [297], they have got to bring themselves within the rule which must exclude the possibility of their having left a will and deeded away the property, or otherwise disposed of it. That is the very point of the rule.

The COURT.—Well, I am admitting it under that rule, and if it does not comply with the rule I shall not admit it, for any purpose whatever.

To which ruling of the Court the plaintiffs herein and the defendants Santa Cruz Development Company then and there duly excepted.

Mr. KINGAN.—We desire the further objection, if the Court please, that he must show first that at the time of the declarations concerning which he is

(Testimony of Marcos C. de Baca.)

about to testify the parties making them were absolutely disinterested.

The COURT.—Well, as I understand the rule, before declarations of persons can be admitted to prove pedigree, it is essential that three facts be established by the evidence, by legal evidence; namely, first, that the declarant is dead or that his testimony is unobtainable. That is the first requisite. Second, that the declarant was related to the family to which the declaration refers by blood or marriage. That is the second requisite. And third, that the declarations were made *ante litem motam*, that is to say, before the controversy about the pedigree in question arose.

Mr. WELDON M. BAILEY.—May it be noted that the Bouldin defendants join in the objection to this testimony, and we save an exception?

The COURT.—Yes.

To which ruling of the Court the defendants Bouldin then and there duly excepted.

WITNESS.—I had conversations with Prudencio Baca in regard [298] to who were the sons of his father, Luis Maria Baca, at different times; I had many conversations prior to his death.

Question.—Now at the time you had these conversations, was there any controversy that you know of as to whether or not Antonio Baca was or was not a son of Luis Maria Baca.

A. I never knew any controversy between the family.

WITNESS.—I heard of some controversy, but not

(Testimony of Marcos C. de Baca.)

in the family of course. It was a controversy between the wife of Antonio Baca and Luis Maria Cabeza de Baca; the controversy was on account of some claim that her children should inherit from Luis Maria Cabeza de Baca. This lady was Francisca Garviso; she was a daughter-in-law to Luis Maria Baca; she was the wife of Antonio Baca; the first child of Luis Maria Baca; she was the wife of Antonio Baca; this Antonio Baca is the Antonio that Mr. Wise is now claiming was the son of Luis Maria Baca, the same man and she the wife of Antonio Baca. She had a controversy with Miguel Baca who was the administrator of Luis Maria Cabeza de Baca—the original Don Luis; if my memory tells me correct, I think the controversy was before the Governor of the Territory at that time; it was not before any Court to my knowledge. I cannot tell you how the Governor had anything to do with it; so far as I know, I could not say whether the Governor had anything to do with it; I am acquainted with the laws of New Mexico but I couldn't tell you what were the laws of New Mexico at that time. Luis Maria Cabeza de Baca died in 1827, and I have not never [299] gone back. My knowledge about this controversy is on account of the paper which my father had, in this paper which I have to-day that controversy must have been before New Mexico was part of the United States; a good many years before; I think it was in 1829, I am not positive sure about the date; it must have been in 1828 or 1829 or probably the latter part of 1827. Antonio, the

(Testimony of Marcos C. de Baca.)

alleged son, was dead at the time that his wife had this controversy.

Mr. FRANKLIN.—Can you state in any way what this controversy was? Do you know what it was?

Mr. NOBLE.—Before the witness answers, I would like to inquire on the *voir dire*.

By Mr. NOBLE.—What are those papers that you are using there?

A. I am using a petition that was presented by the administrator of Luis Maria Cabeza de Baca to the Political Chief of New Mexico at that time; it is a copy of the original paper which I have at home. [300]

It is in Spanish. I got it from the papers of my father. I made the copy myself.

Examination of the Witness Continued.

By Mr. FRANKLIN.—I never heard of a controversy as to whether or not Antonio Baca was or was not a son of Luis Maria Baca. There was no controversy before the Governor of New Mexico of the Mexican Republic as to who the children of Luis Maria Baca were, or the grandchildren of Luis Maria Baca. As I have been informed the controversy was between the wife of Antonio Baca and the administrator of Luis Maria Baca, the original Luis Maria.

Q. State what the controversy was if you know.

Mr. NOBLE.—Subject to our objection.

WITNESS.—From my information?

(Testimony of Marcos C. de Baca.)

Mr. FRANKLIN.—Certainly, from your information.

WITNESS.—My information was that the controversy was about some inheritance that Francisca Graviso claimed from the administrator of Luis Maria Cabeza de Baca, that was coming to her through her father and Antonio Baca pertaining to her children, that she had, Juan Manuel Baca.

Q. State what the controversy was, if you know. controversy that she, as the wife of Antonio, was not entitled to whatever it was she claimed?

Mr. NOBLE.—Same objection.

The COURT.—Same ruling.

A. It was on account of some debts that Antonio Baca was owing at the time of his death to Luis Maria Cabeza de Baca.

Mr. FRANKLIN.—Q. On account of some debts. Was it in regard to any will of Luis Maria Baca?

A. No, sir. [301]

Q. Was it in regard to any interest that Antonio Baca had in the estate of his father as an heir? I mean to say as coming to him as an heir? A. No.

Q. It was in regard to debts?

A. It was merely debts that Antonio Baca was indebted, when he died, to Luis Maria Cabeza de Baca.

Q. Do you know whether Luis Baca left a will when he died? A. I think he did.

Q. Do you know where that will is?

A. I think—I couldn't say whether it is the original will or a copy of the will, but the will is

(Testimony of Marcos C. de Baca.)

filed in the Surveyor General's office in Santa Fe.

Q. You say there was a copy filed; you say that there was a copy filed?

A. No, I say that I don't know whether it is the original or a copy.

Q. Do you have any copy of that paper?

A. I have a copy of the paper; yes, sir.

Q. Do you have it with you? A. Yes, sir.

Q. Will you please produce it? (Witness produces paper.)

Q. Did you either make that or compare that copy with the original yourself?

A. I took it from a certified copy that my father got from the Surveyor General's office.

Q. That is a copy of a certified copy?

A. This is not a certified copy, but I got it from the certified copy. The certified copy that I got is filed in the District Court of Sandoval County in a partition suit that was brought there some time ago; that was thirty-five years ago. It is over there in that court, the original,—I mean the certified copy that I brought. [302]

Mr. NOBLE.—Q. When was that partition suit brought? I did not quite catch that.

A. The first suit was brought for the partition of the Baca location, you mean?

Q. Yes.

A. That was brought in 1875 I think. It was in '75 or '76.

Mr. FRANKLIN.—Q. Is that in Spanish?

(Testimony of Marcos C. de Baca.)

A. Yes, all these papers were in the certified copy of that will.

Q. You say you made this yourself?

A. Yes, sir.

Mr. FRANKLIN.—We will offer in evidence this copy.

Mr. KINGAN.—Let us see it.

Mr. FRANKLIN.—It is in Spanish. It won't do you much good.

The COURT.—Perhaps counsel can read it or have it read to them.

Mr. FRANKLIN.—We will have the gentleman read it with the permission of the Court.

The COURT.—I say counsel may be able to read it or understand it, or have it read to them.

Mr. NOBLE—We can make out what it says, your Honor.

Mr. FRANKLIN.—Mr. Baca, do you have with you the paper which purports to be a copy of the will of Luis Maria Baca? A. Yes, sir.

Q. Are you a Spanish scholar; do you know the Spanish language?

A. That is my mother-tongue.

Q. And you are perfectly competent to translate Spanish into English or English into Spanish?

A. I would not say I am very competent. I have been translator in the land office of New Mexico for three years.

Q. Official translator in the land office of New Mexico? A. Yes, sir. [303]

(Testimony of Marcos C. de Baca.)

Q. Now, have you made a translation of that will or alleged will and petition which were offered in evidence yesterday, an English translation?

A. Yes, sir.

Q. This is it, is it not? (Showing papers to witness.)

A. Yes, sir, that is it.

Mr. FRANKLIN.—I have made typewritten copies of this, your Honor, and will give the gentlemen typewritten copies. I would have done so before but it was not finished until ten minutes ago. So that they can see what is in this document in English. Shall I give it to your Honor to read or shall I read it out loud so that they can all hear it?

Mr. BREVILLIER.—The original is offered in evidence?

Mr. FRANKLIN.—The original is offered in evidence.

Mr. BREVILLIER.—For what purpose?

Mr. FRANKLIN.—Well, now, yesterday, this gentleman said that the law was that a man is presumed to die testate, and believing at that time that that was the law I endeavored to get this copy of the will. I find now it is not the law. It makes no difference; one is presumed to die intestate. I offer it simply as a matter of good faith, because I offered it yesterday. You can take it or can let it alone.

Mr. BREVILLIER.—I object to this paper as incompetent, irrelevant and immaterial.

(Testimony of Marcos C. de Baca.)

The COURT.—I don't understand it has been offered.

Mr. FRANKLIN.—I offer the original and this translation your Honor. They are copies of a certified copy of what purports to be the will of Luis Maria Baca. I made the offer of the original. They do not object, I presume, to the translation.

Mr. BREVILLIER.—There is no objection to the translation.

Mr. FRANKLIN.—I have the original here. That is the copy. [304]

Mr. BREVILLIER.—It does not throw any light on this question of heirship.

Mr. BAILEY.—It will not do any harm. Why not let it go in and save time?

Mr. BREVILLIER.—I cannot tell what this is going to lead up to. I don't see that this has anything to do with the heirship of Antonio Baca.

The COURT.—Do you think it is material, Mr. Franklin?

Mr. FRANKLIN.—Your Honor, if your Honor should hold it incumbent upon us to prove testacy it is material. If your Honor should hold that in the absence of any such proof—and I believe it is the law—that intestacy is presumed and the children all inherit equally as heirs, then it is not material. It depends upon what view of the law your Honor may hold on the subject as to its materiality.

The COURT.—It may be received subject to defendant's objection. I really do not see at this stage of the case how it is material. It may become so at

(Testimony of Marcos C. de Baca.)
some time during the progress of the case.

Defendants Wise Exhibit 39.

The paper and its translation were received in evidence and marked by the clerk "Defendants Wise Exhibit 39," and is printed as part of the proceedings had subsequently on November 1, 1915. *Infra*, p.—)

Mr. FRANKLIN.—Q. Mr. Baca, you have already stated that Prudencio Baca, who was a son of Luis Maria Baca, died in 1882, have you not?

A. Yes, sir.

Q. Now prior to that time did Prudencio Baca make any statements to you in regard to the relationship of Antonio [305] Baca to Luis Maria Baca, deceased,

Mr. NOBLE.—I object to the question because it appeared yesterday that there was a controversy in 1875. This witness testified to it; and it also appeared from this document which has been put in evidence, that there was a controversy as far back as 1827 relating to the very question of the right to inherit, as this witness described it yesterday, of this alleged Antonio who is said to be, by the witness, the husband of this Francisca Garviso.

Objection overruled and exception allowed to plaintiffs.

Santa Cruz Development Company and Bouldins made the same objection, same ruling, and each then and there duly excepted to the ruling of the Court.

Mr. FRANKLIN.—Q. Now, prior to that time did Prudencio Baca make any statements to you in re-

(Testimony of Marcos C. de Baca.)

gard to the relationship of Antonio Baca to Luis Maria Baca, deceased? A. Yes.

Mr. FRANKLIN.—Q. When and as near as you can recollect, was your first conversation with Prudencio Baca on that subject?

A. I couldn't state it positive, but I think it was about 1873, the latter part of the year.

Q. And where was the conversation?

A. At Pena Blanca.

Q. New Mexico? A. Yes, sir.

Q. Please state what Prudencio Baca said to you in 1873 at Pena Blanca in regard to who Antonio Baca was and in regard to his relationship, if any, with Prudencio Baca himself or with Luis Maria Baca.

Mr. NOBLE.—Now, if the Court please, before that question is answered may I have the privilege of asking the witness some questions on the *voir dire*?

The COURT.—Yes.

Mr. NOBLE.—Q. You said yesterday, Mr. Baca, that along [306] back in 1875, I think it was you said, there was a controversy about some partition among the Baca heirs, did you not?

A. I believe that you misunderstood me, Mr. Noble, I said that in 18— if I am permitted to answer.

The COURT.—You may do so.

A. I said that I thought it was in 1875 that a partition suit was brought against the heirs of Luis Maria Baca for the partition of Baca Location No. 1

(Testimony of Marcos C. de Baca.)
in New Mexico, and for the partition of the Ojo del Espiritu land grant at that time.

Mr. NOBLE.—That was about in 1875?

A. Early in that year.

Q. There had been a controversy for a long period prior to the bringing of that suit among the Baca heirs as to who owned which part and how much they owned, etc.; hadn't there been?

A. Not to my knowledge.

Q. How old were you in 1873?

A. Sixteen years, a little over sixteen years.

Q. Where did you live? A. At Pena Blanca.

Q. And are you a son of Tomas Cabeza de Baca?

A. Yes, sir.

Q. Did you hear your family affairs discussed when you were a boy of sixteen?

A. Very often. My father told me everything about the family.

Q. And you knew that there was an effort on the part of various ones of the heirs to get their parts in the Baca Float No. 1, didn't you? A. No, sir.

Q. Didn't you know that they were claiming anything in Baca Float No. 1?

A. If you want me to state the facts about it, Mr. Noble—

Mr. NOBLE.—I would like you to answer my question.

The COURT.—Read the question. [307]

(Question read.)

A. The heirs of Luis Maria Baca, you mean?

Mr. NOBLE.—Q. Yes.

(Testimony of Marcos C. de Baca.)

A. Oh, of course, they were claiming.

Q. And they were claiming parts of this grant, this Ojo del— A. Ojo del Espiritu.

Q. And then you mentioned another tract of land that they were having a controversy about. What was the name of that one?

A. I don't know of any other one.

Q. These are the two you mentioned?

A. Those are the two that I mentioned at that time. What I mentioned about—

Q. Wait a minute. I just wanted to get the names. You said them in Spanish so quickly I thought there were three instead of two. Now, the controversy among the heirs of Luis Maria Cabeza de Baca is the controversy that you were talking about, isn't it?

Mr. FRANKLIN.—I object to that as assuming something that the witness did not say.

The COURT.—I will sustain the objection to that question because it assumes that there was a controversy.

To which ruling of the Court the plaintiffs then and there duly excepted.

Mr. NOBLE.—Q. Now, in 1875 and in 1874 and in 1873 you remember discussions, do you not, in your family and among the other members of the Baca family that you met as to how they were going to divide up this Grant No. 1, or this Ojo del Espiritu? A. No, sir.

Q. You don't remember any discussion?

A. No discussion was taking place at that time about the division of that land.

(Testimony of Marcos C. de Baca.)

Q. No discussion was taking place? A. No, sir.

Q. The discussion commenced suddenly in 1875, did it? A. Yes, sir. [308]

Q. Commenced suddenly?

A. I don't say it commenced suddenly. The partition suit was not brought.

Q. It commenced in 1875?

Mr. DUNSEATH.—May it please the Court, I object to these questions on behalf of the defendants Jesse Wise and Margaret Wise.

The COURT.—The objection is overruled.

To which ruling of the Court the defendants Jesse Wise and Margaret Wise then and there duly excepted.

Mr. NOBLE.—This discussion commenced in 1875. Did it commence the day the lawsuit began?

A. I couldn't say it commenced the day the lawsuit was brought. The lawsuit was brought by Jose Perea against the heirs of Luis Maria Cabeza de Baca.

Q. There was a controversy existing some time previous to the bringing of the lawsuit, wasn't there, a discussion and contention? A. Not that I knew.

Q. Not that you knew. Do you want the Court to understand that there was no claiming of rights on one side and claiming of rights on the other anterior to the date the suit was brought?

(Question read after some discussion.)

Mr. NOBLE.—I will change the word "anterior" to "before."

A. I don't mean that. I mean to say that if there

(Testimony of Marcos C. de Baca.)

was any discussion amongst themselves, it may have been which I did not hear it, and I was never informed about it.

Q. Now, you were a boy of sixteen in 1873, weren't you? A. Yes, sir.

Q. Where did Prudencio live at that time?

A. He had moved from Loma Parda to Pena Blanca.

Q. Where did your father live at that time?

A. Pena Blanca. [309]

Q. Where did Jesus live at that time?

A. Which one of the Jesuses?

Q. The first one.

A. Loma Parda in San Miguel County.

Q. Where did Jesus the Second live?

A. Same place.

Q. Where did the other sons and daughters of Luis Maria Baca whom you knew at that time live?

A. Manuel and Josefa lived at Pena Blanca at that time.

Q. Who is this Manuel? Was he a son of Luis Maria.

A. He was a son of Luis Maria.

Q. You saw them as a child, didn't you?

A. I saw them as a child and I saw Manuel when I was a grown man.

Q. We are talking about 1875 now.

Q. Did you ever hear any talk among these sons of Luis Maria Cabeza de Baca about their claims to this Float No. 1 prior to the fall of 1873?

A. I heard some claim about that Float No. 1 prior to 1873. [310]

(Testimony of Marcos C. de Baca.)

Q. You heard discussions of claims about that?

A. Yes.

Q. Now, about Ojo del Espiritu?

A. About Ojo del Espiritu I did not know anything until about 1873.

Q. Until about 1873? A. Yes.

Q. Now, the discussions were as to who owned these grants, were they not. About which ones of the sons of Luis Maria Baca were entitled to those grants, weren't they?

A. I did not hear any discussion, Mr. Noble. What I heard was speaking amongst the family about what they owned or what they did not own at that time.

Q. Would you say that there were no discussions among the family as to which one, which group was entitled to this right and which group was entitled to that right? A. Not in that manner.

Q. You would not say that? A. No, sir.

Q. As a matter of fact, you know, do you not, that for a long time there had been claims worked on by your father? A. I knew that.

Q. How early did you learn that?

A. Well, I couldn't say. Well, I can tell you that in 1869, in July, I went with my father for the first time to Baca Location No. 1.

Q. And you knew that your father was working on Baca Location as a claim for some of the Baca heirs?

A. Yes, sir; that is what he told me then.

Q. That is what he told you? Did you ever hear

(Testimony of Marcos C. de Baca.)

any disputes or any quarrels, or rumors of quarrels in the family about Baca Float No. 1? ,

A. No, sir.

Q. Never heard anything of that sort?

A. No, sir.

Q. You wouldn't say they did not exist?

A. I don't think so.

Q. Well, now, some of these Bacas in this lawsuit which [311] you referred to were claiming some rights as against somebody else, weren't they?

A. No, sir; I think that those rights were claimed by Don Jose Perea who claimed to have purchased the interest of these Bacas.

Q. Why did he sue the Bacas in that case?

A. Because according to the statute of New Mexico, they had a kind of partition law there and he brought suit to partition the property or sell it.

Q. In that case he had to prove who were the heirs of Luis Maria de Baca, didn't he? A. I think so.

Q. And they had a fight about who they were, didn't they? A. Yes, sir.

Q. That was the question in controversy, wasn't it—as to who the heirs of Don Luis Maria Cabeza de Baca were; that was the controversy; wasn't it?

A. Yes, sir.

Q. That suit was commenced in about 1875?

A. I think so; I am not positive about the date, Mr. Noble.

Q. You don't happen to know, because you were so young at that time how long anterior to that there had been any quarrel or any discussion or any con-

(Testimony of Marcos C. de Baca.)

tention between the parties?

A. I never heard any. I never heard any.

Q. You don't happen to know how long they had been discussing this question?

A. Amongst the family?

Q. Yes.

A. I don't think they had discussed it before that time.

Q. Why do you say that?

A. I will tell you why I say it.

Q. All right, let's have it.

A. Because my father always told me that he had been empowered by his uncle to get the Las Vegas grant confirmed, and that upon those terms he had employed Judge Watts at the time I think it was changed in Congress, he [312] had offered him a certain portion of the land if he could get that grant settled, and I understand—

Q. Now, then, Mr. Baca, I asked you why, but I direct your attention that what I asked you about was the controversy in the suit for partition. Now, that is what I want you to answer about. I don't mean to cut off your answer unduly, but what I am interested in is to find out the contention between the plaintiff and the heirs of Baca in the suit brought in 1875.

A. I cannot understand what it is that you want.

Q. You say that in this suit commenced in 1875 there was a man claimed to have bought out some interests from some of the heirs of Baca?

A. Yes, sir.

(Testimony of Marcos C. de Baca.)

Q. And he brought suit against some of the other heirs of Baca? A. Yes, sir.

Q. For partition, and in that suit they had to prove who the heirs of Luis Maria Cabeza de Baca were?

A. I have stated that.

Q. Now, I say to you, how long previous to 1875 had the plaintiff in that suit brought his rights which he there asserted?

A. I couldn't tell you how long prior to that. I know that he bought some interest in 1873.

Q. Did he buy any in 1870?

A. He may have bought; I couldn't say that. I never knew anything about the business. I knew about this transaction in 1873 because my father deeded to him some interest which he had purchased in Baca Location No. 1.

Q. And because he had purchased that interest and other interests he brought a suit involving the question of who the heirs of Luis Maria Baca were, and that, as you remember it, started in 1875?

A. I think so.

Mr. NOBLE.—Now, if the Court please, I think we have [313] shown from the witness that a controversy as to the heirs of Luis Maria Cabeza de Baca existed from somewhere along about 1873 down through the lawsuit. There were subsequent lawsuits which it isn't necessary here to go into; and that under the necessities of the situation which he described there was a controversy about this time, as to who the heirs of Luis Maria Baca were, because this suit was brought in 1875, only a short time after

(Testimony of Marcos C. de Baca.)

the conversation which he says he had with Prudencio Baca and about which he is interrogated.

Objection overruled; to which ruling plaintiffs and the defendant Santa Cruz Development Company and the defendants Bouldin then and there duly excepted.

Mr. FRANKLIN.—The question I asked was please state the conversation between Prudencio Baca and yourself in 1873 at Pena Blanca, in regard to the relationship of Antonio?

WITNESS.—I was inquiring from him who the children of Luis Maria Cabeza de Baca were. He gave me the names, amongst them the name of Antonio Baca, as the eldest child of Luis Maria. He gave me the name of another child who went by the name of Antonio, namely, Juan Antonio, who was my grandfather; he gave me the names of the rest of the heirs. I had a conversation with Prudencio Baca after 1873, and before I learned of this partition of 1875, on the subject of the relationship of Antonio Baca; this second conversation may have been in 1875; it was before the partition suit; I couldn't state exactly how long before; it may have been nearly a year; this conversation took place at my own father's house at Pena Blanca, New Mexico.

Mr. FRANKLIN.—Q. Now, will you please state the substance of that conversation so far as it related to Antonio Baca?

Mr. BREVILLIER.—We make the same objection. [314]

The COURT.—Same ruling.

(Testimony of Marcos C. de Baca.)

To which ruling of the Court the Santa Cruz Development Company, by its counsel, then and there duly excepted.

WITNESS.—I was showing Prudencio a list of the names of the family as I had got them, and was inquiring of him whether it was correct or not. In all the lists that I made I always had the name of Antonio Baca as the first son of Luis Maria Cabeza de Baca.

Mr. FRANKLIN.—Q. What did Prudencio say in regard to whether it was correct or not?

Mr. BREVILLIER.—Same objection.

The COURT.—Same ruling.

To which ruling of the Court Santa Cruz Development Company, by its counsel, then and there duly excepted.

WITNESS.—He said it was a correct list of Luis Maria Cabeza de Baca's family.

Q. Have you that list with you, that you made at that time?

A. I have a list with me made at that time, but it is a copy of the one that I made at that time. I have got several lists on scrap paper.

WITNESS.—The list that I made at that time I do not think that I have got it any more, but I have got copies which I made from that. I have got it with me. (Witness then produces paper.) I think I made this copy that I now show you—I couldn't say positive the year—but it might have been after 1880; I could not say how long after 1880, it must have been between 1880 and 1884. This, I say, is a

(Testimony of Marcos C. de Baca.)

copy of the list I then submitted to Prudencio Baca. It contains not only the names of the sons but the descendants of the sons, their wives and their children and grandchildren. [315]

WITNESS.—I want to state to you that in that list you will find that the family of Juan Antonio Cabeza de Baca was not inserted because I knew what the family were and he was my grandfather and I did not put it in there; Juan Antonio is not in that list. I had to put that in the book. I have it in the book where I have got all the family.

Q. You mentioned that there was an Antonio Lucero Baca, didn't you?

A. Antonio Lucero, no; Antonio Baca.

Q. Was his name Lucero? A. No.

Q. You mentioned Antonio Lucero Baca a little while ago. A. I don't think so.

Q. Yes you did, but you didn't mean Antonio Lucero if you said it.

The COURT.—I understood you to say Antonio Lucero.

Mr. HEATH.—At the head of the list.

WITNESS.—No.

Mr. FRANKLIN.—Q. If you did say Antonio Lucero you simply meant Antonio; is that the idea?

A. I meant to say that in all the lists which I made from the family record of Luis Maria Cabeza de Baca I had Antonio Baca at the head of every list as the eldest child of Luis Maria Cabeza de Baca.

Q. Did this Antonio have a further surname, Antonio Lucero Baca?

(Testimony of Marcos C. de Baca.)

A. No, he used to be called Jose Antonio sometimes.

WITNESS.—I stated that I had a conversation with Manuel Baca who was a son of Luis Maria Baca, in regard to Antonio. I did know a Manuel Baca who was a son of Luis Maria Baca. I have already stated that I had a conversation with him in regard to Antonio; Manuel Baca did not have any further name than Manuel. I couldn't fix the dates very positive when I had the first conversation with Manuel [316] Baca on the subject of Antonio. I had it at different times.

Mr. FRANKLIN.—Q. Did you have a conversation with him prior to 1875?

A. I do not recollect whether I had any with him or not prior to that time.

Q. Did you have a conversation with him after 1875? A. In 1875 I had a conversation with him.

Mr. NOBLE.—May we renew our objection.

Mr. FRANKLIN.—Q. Was that conversation with him before or after the bringing of the partition suit that you have referred to? A. Before.

Q. About how long before?

A. Well, I couldn't state how long before the suit was brought. I couldn't recollect at this time. It may have been six months; it may have been a year.

Q. Where did that conversation with Manuel Baca take place?

A. At my father's house at Pena Blanca.

Q. Now, please state the conversation that took place with Manuel Baca at that time in regard to Antonio Baca.

(Testimony of Marcos C. de Baca.)

Plaintiffs, defendant Santa Cruz Development Company and the Bouldins objected on the grounds heretofore made.

Objection overruled, to which ruling the plaintiffs, and the defendant Santa Cruz Development Company and the defendants Bouldin then and there objected.

WITNESS.—I was inquiring with him also if the list which I had made of the family of Luis Maria Baca was correct or not.

Q. What did he say?

A. And he said that was a correct [317] list of old Luis Maria Baca's children and that Antonio was the eldest child of Luis Maria Cabeza de Baca.

WITNESS.—Luis Maria Cabeza de Baca was married three times; he had three wives; I know the names, I have got them in that list, the first wife was Anna Maria Lopez, then Josefa Sanchez and Encarnacion Lucero; that accounts for some of these children being called Lucero. Manuel Baca is dead—he died, I am not positive but I think he died in 1905. I knew Domingo Baca who was a son of Luis Maria Baca; he is dead; I think he died about 1895. I couldn't say positive when I had my first conversation with Domingo Baca in regard to the relationship of Antonio Baca to Don Luis Maria Baca. It may have been in 1893 or 1894. It was at Pena Blanca.

Q. Please state what he said on the subject of Antonio Baca, the relationship of Antonio Baca to Don Luis Maria Baca?

(Testimony of Marcos C. de Baca.)

Plaintiffs, defendant, Santa Cruz Development Company and defendants Bouldin objected on the ground that it is clearly inadmissible and incompetent, since the conversation referred to took place twenty years after that controversy started.

Objection overruled. To which ruling of the Court, the plaintiffs, the defendant Santa Cruz Development Company and the defendants Bouldin then and there duly excepted.

(Question read.)

A. That he was a son of Luis Maria Baca.

The COURT.—I should like to ask the witness a question. I should like to know how you were interested in making these inquiries. What prompted you to make these inquiries on these various occasions?

A. I had a notion to make a book of the family record from Luis Maria de Baca to the present generation.

Q. You had that notion in 1873 and again twenty years [318] later.

A. I had that notion in 1873 when I left school..

Q. You took it up twenty years later?

A. Yes, sir; and I take it today when I find any member of the family that I haven't got in the book. I inquire from him who his children are and I put them down.

Q. Didn't you know twenty years after you got the first information from these other two heirs who the children were?

A. I had the information. I knew who they

(Testimony of Marcos C. de Baca.)

were by the list that I had.

Q. Were you representing them in a professional way at that time?

A. Not at that time. I never intended to practice any law.

Q. You did not?

A. And I did not for twenty years afterwards.

Q. Then you were't interested in the matter at all except—

A. No, sir; except to keep the record of the family; that is all.

The COURT.—Proceed.

WITNESS.—I was not acquainted myself with Francisca Garviso. I did make inquiry in regard to who she was from Prudencio Baca and Manuel Baca. In this list which I presented to Prudencio Baca the name of Francisca Garviso does appear. In the conversation which I had with Prudencio Baca he made statements to me as to whether Antonio was married during his lifetime. Francisca Garviso is dead. I don't know when she died. In the conversation with Prudencio Baca something was said in regard to whether or not Antonio Baca had any children.

Q. I am speaking now of the conversation of 1873, what did he say on that point?

Plaintiffs and defendants Bouldin objected on the ground that defendant Wise had not brought himself within the rule as to these children, and that this Prudencio Baca was himself [319] a party to a deed in 1871, prior to this, in which he cove-

(Testimony of Marcos C. de Baca.)

nants that the people who signed that deed are all of the heirs of Baca, and his declarations are inadmissible.

The COURT.—Can you estop a witness? [320]

Mr. CAMPBELL.—He is in the chain of title to Wise.

The COURT.—I understand, but is he estopped from swearing?

Objection overruled, to which ruling plaintiffs and defendants Bouldin then and there duly excepted.

WITNESS.—He said that Antonio Lucero Baca had a child.

Mr. FRANKLIN.—Q. Who was Antonio Lucero?

A. Antonio Baca, I mean, not Antonio Lucero.

Q. Then you are mistaken when you say Lucero?

A. Yes; I have another uncle by the name Antonio Lucero that I have got in another list.

Q. I am asking you the question whether Prudencio Baca said anything to you in 1873 as to whether or not Antonio Baca left any child or children?

A. Yes, he said he left a child.

WITNESS.—Nothing was said about when Antonio died?

Q. Do you know whether or not Antonio Baca was dead at that time? A. He was dead.

Q. Do you know that?

Mr. REVILLIER.—One moment, if the witness has no personal knowledge as to whether or not the man was ever living,—depends entirely on what he hears,—certainly he has no personal knowledge as

(Testimony of Marcos C. de Baca.)
to whether he is dead.

The COURT.—I am surprised that the witness answered that question as he did. If he answers as a positive fact that he was dead when he does not know, it goes to his credibility. Of course, I will have to remember those sort of things when I come to consider the evidence.

A. I have been informed by Prudencio Baca and by my father that Antonio Baca was dead in 1873 and I believed everything that my father told me. Prudencio Baca stated to me the name of the son of Antonio Baca; his name was Juan [321] Manuel Baca. I did not know Juan Manuel Baca in his lifetime. I was told by Prudencio Baca and by my father and by Manuel Baca that Juan Manuel Baca was dead prior to 1873; they did not state when he died but he was dead in 1873; I was told that he was dead; I was told that Juan Manuel Baca was married and his wife was living at that time; Prudencio Baca told me that.

Mr. BREVILLIER.—As to the proof of marriage by the declaration of one person or two persons, I make the objection that marriage cannot be proved in that way and the testimony is incompetent, irrelevant and immaterial; and I move to strike out the testimony on the question of marriage.

Objection overruled, to which ruling of the Court the defendant Santa Cruz Development Company then and there duly excepted.

WITNESS.—Prudencio did state the name of the wife at that time. The name he gave me was Fe-

(Testimony of Marcos C. de Baca.)

liciana Padilla. I did not ever meet this lady, Feliciana. I don't remember her.

Mr. CAMPBELL.—If the Court please, I want to interpose another objection in a little different form. I don't think the Court quite understood the former objection, the one I attempted to make a moment ago. The objection is this: That the defendants Wise are estopped from showing that there was an heir other than those set forth in the deed of 1871. It appears from the testimony of this witness that his ancestor signed this deed wherein it was stipulated and covenanted that those signing the deed were the sole heirs of Luis Maria Baca. It appears also that the defendants Wise deraign their title through this man, this witness, and his ancestor covenanted to defend that title against all claims, he and his heirs. Whenever this heir acquired any title that was adverse to the title conveyed in 1871 he acquired it for the benefit of [322] the grantee of his ancestor under this warranty deed.

The COURT.—I think that objection was made early in the trial.

Mr. CAMPBELL.—I don't think it has been made. I attempted to make it a moment ago, but I don't think I made myself quite clear. It is not only the recitation that binds them. I made the objection that Mr. Wise, claiming title under this deed of 1871, was bound by it, but now it appears that they deraign title through this man, and that his ancestor warranted that he and his heirs and assigns would forever warrant the title conveyed by

(Testimony of Marcos C. de Baca.)
the deed of 1871.

The COURT.—This witness did not inherit the title. He purchased the title, did he not, to start with?

Mr. CAMPBELL.—It says that the said John S. Watts, his heirs and assigns, shall quietly enjoy the possession of said lands free from all claims or demands of said heirs of Luis Maria Baca, their heirs, administrators and assigns.

The COURT.—But that does not bind an heir who deraigns his title by purchase, does it?

Mr. CAMPBELL.—Why not? He has to make it good, if the Court please. If there is any outstanding title, it is his duty to make it good. His ancestor warranted the title and bound him to warrant his heirs to warrant the title.

The COURT.—I will hear you on that question in the argument. That is too deep a question to go into right now.

Mr. FRANKLIN.—Your Honor, I think if you will look at the deed you will find that question is not in the case.

The COURT.—I say that is a matter I will hear you on later. The testimony is received subject to the defendants' objection. [323]

Mr. NOBLE.—If the Court would allow me, I would like to participate in that objection and reservation.

The COURT.—Yes.

WITNESS.—I have made inquiry in regard to her as to where she is; she is dead. I have not

(Testimony of Marcos C. de Baca.)

learned the exact date when she died; I think she died about 1882. I know of my own knowledge that Juan Manuel Baca left two children surviving him; the names of the children that Juan Manuel Baca left are Jose Baca and Preciliana Baca. Jose was a son and Preciliana was a daughter. Preciliana and afterwards married. She married Mares and her name thereafter was Preciliana Baca Mares.

I did know Jose Baca in his lifetime; he is dead; I think he died in 1905. He did leave children. I know his children. The names of the children of Jose Baca are Preciliana Baca, Esteban Baca, Francisco Baca, Luciana Baca, Pilar Baca and Epigmenia Baca. Epigemnia Baca is dead and Inez Lucero is her daughter. I do not remember when Epigmenia Baca died, she was dead at the time that these various parties executed their deed to me. Now these various persons whose names I have mentioned as the children of Jose Baca are the same persons who signed the deed to me. There is another son of Jose Baca, Ignacio Baca, who is dead, but his children signed a deed to me for their interest. Ignacio Baca was a son of Jose Baca, in addition to the children whose names I have mentioned, I think he died in 1908 leaving children. The children that Ignacio Baca left were Guillermo and Eloisa. These two children are two of the persons whose names are signed to the deeds to me which are in evidence in this case. There were no other children of Jose Baca, deceased.

Preciliana Baca is dead; she was married in her

(Testimony of Marcos C. de Baca.)

lifetime to Antonio Mares; I knew him; she left children. I know all [324] the children she left. The names are Guadalupe Mares, Meliten Mares, Eulogio Mares, Entimo Mares, Higinio Mares, Pabol Mares, Encarnacion Mares, Inez Mares, Felip Mares. Inez Mares, a son, is dead. He died about eighteen years ago; he left children.

Q. State the names of his children.

The COURT.—Why cannot you just say that they are all set out in the deeds.

Mr. FRANKLIN.—They are recited as being children in the deeds.

WITNESS.—Yes, sir.

Q. You are the same Marcos de Baca to whom they executed those deeds, are you not?

A. Yes, sir.

Q. And the same Marcos de Baca who executed the deed to Joseph E. Wise and Jesse Wise?

A. Yes, sir.

Defendants Wise Exhibit 33.

By consent of all parties a list of the children and descendants of Antonio Baca, and their descendants, made by the witness was received in evidence as a matter of convenience. Said list is as follows:
[325]

DEED NO. 19:

Juana L. Baca
Widow of Jose Baca

Preciliana Baca
Esteban Baca
Francisco Baca
Luciana Baca
Pilar Baca
Ines Lucero
Daughter of Epig-
menia Baca, dec'd.

Preciliana Baca
Children of Jose Baca

Son of Juan
Manuel Baca

Son of Antonio
Baca

Guadalupe Mares de
Sandoval
Meliton Mares
Enlogio Mares
Entimio Mares
Higinio Mares
Pablo Mares

Children of Precil-
iana Baca de Mares
Juan Manuel
Baca

Daughter of
Juan Manuel
Baca

Son of Antonio
Baca

DEED NO. 20.

DEED NO. 21.

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(Testimony of Marcos C. de Baca.)

Mr. FRANKLIN.—Q. I believe you have stated that the various recitals as to these deeds, as contained in the deeds themselves, that were made to you about these various heirs, are correct?

A. Yes, sir.

Mr. REVILLIER.—I would ask you, Mr. Franklin, to limit it to heirship subsequent to Antonio Baca.

Mr. FRANKLIN.—I will limit it that way, that the recitals of the family tree and descent, as contained in the deeds to you that are in evidence here, are correct.

Mr. NOBLE.—As to whom?

Mr. FRANKLIN.—As to all of these children he has been [327] testifying about. The family tree is right in the deeds. I made this memorandum from those deeds, as being the descendants of Antonio Baca. Of course, as to the question whether Antonio was a son or not, he has already testified.

Mr. REVILLIER.—And whether Antonio died leaving any children.

Mr. FRANKLIN.—That fact?

Mr. REVILLIER.—Yes, beyond that fact.

Mr. FRANKLIN.—That is in accordance with what he has testified. The deeds are in accordance with what he has testified. The names are all in there as matters of record.

Mr. FRANKLIN.—Q. I will ask you to look at the deed which I now present to you, being Plaintiffs' Exhibit "G," and being the deed from Domingo Baca and Rosalia Garcia Baca to Franco

(Testimony of Marcos C. de Baca.)

Baca. I call your attention particularly to the description of the property that is described in that deed; there is a translation attached to that deed. I will read the translation for the benefit of the Court according to the translation, which is as follows:

“All that part to which the said Domingo Baca and Rosalia Garcia are entitled under the location or lease of the Balle Grande, according to a judgment of the government of the United States in favor of the heirs of Luis Maria C. de Baca, which property is free of all classes of incumbrances and mortgage, we having a perfect right to dispose of the same.”

Now, Mr. Baca, do you know the lands called the Balle Grande, referred to in the deed?

A. Yes, sir.

Q. Where is the land known by the name of Balle Grande? A. It is Baca Location No. 1.

Q. Where is that situated?

A. In Sandoval County, New Mexico.

Q. And is that the name by which that Location No. 1 is generally known?

A. Amongst the native people, there, yes. [328]

Mr. NOBLE.—Q. Was that a part of the general boundary of 500,000 acres which your ancestor had known as the Las Vegas Grant? A. Yes, sir.

Cross-examination of the Witness, MARCOS C. de BACA.

(By Mr. KINGAN.)

I am familiar with the place known as Santa Cruz,

(Testimony of Marcos C. de Baca.)

mentioned in the will of Don Luis Maria Cabeza de Baca, and referred in the following clause in the will, namely, "I order that the rest of the lands known as mine be divided amongst my heirs in equal shares, except the place of Santa Cruz." That place—the place of Santa Cruz—is about three miles above the town of Pena Blanca on the north side; I should say, by taking the distance of the railroad, is 103 miles from Las Vegas. I began my genealogical study into the family of Baca in 1873; that is when I began. I was admitted to practice law in New Mexico, I was admitted in the District Court in 1889 and in the Supreme Court of the State in 1891. I was nine years old when I began to write in '66; [329] when I was sixteen years old I had quit school, I was then attending to my father's business; I did not have any business of my own; I was attending to his business—he was still living, that was Tomas Cabeza. I first met Mr. Joseph E. Wise in 1913. I did not have any correspondence with him prior to that time. I met him in Bernalillo. I had not at that time procured the conveyances which are in evidence here from the reputed descendants of Antonio Baca. I did not have any agreement with Mr. Wise to obtain this title from the heirs of the reputed Antonio. He did not ask me to give him the title for nothing during the time, and when I met him the first time he never spoke to me a word about those heirs. He just introduced himself to me as Mr. Wise. He was looking for me and asked if my name was Marcos de Baca and I told him that

(Testimony of Marcos C. de Baca.)

was my name; and he told me he would like to see me and I told him I was very busy that day in court, but told him I would be glad to have the pleasure of meeting him at any time he wished. So we set the hour of four o'clock in the afternoon to meet and I met him at four o'clock in my office. I did not at that time agree to get this title for Mr. Wise. Later I agreed to get it for him, and pursuant to the agreement with Mr. Wise I obtained these deeds that have been offered in evidence here from the reputed heirs of Antonio.

Q. Is it not a fact, Mr. Baca, that you are still interested in the matter to this extent; that if the heirship or title of Antonio is sustained you are to receive a certain amount of money?

A. It is not true, sir. It is a mistake, whoever may have informed you about it. [330]

WITNESS.—I did not represent to Mr. Wise at the time I sold him this property that those deeds carried title; I did not represent anything; I told him who the heirs of Luis Maria Cabeza de Baca were. A certain amount of money was not paid to me, it was paid to the heirs. I received the money which I paid for those interests. For my services of course I received something. I referred this morning in my testimony to a list, a so-called family tree, I have got it here (witness shows it to counsel). This is a list made out from the lists which were given to me; this is a list or a paper which is a copy of the lists made on different scrap copies; from those copies I have got this. I couldn't say positive

(Testimony of Marcos C. de Baca.)

when I made this list, but it was maybe in 1884 or maybe a little later, I couldn't fix the date positively, but it is within that date. I made the original of this paper from other papers made by me in my own handwriting. I wrote them down myself by the information of the other people—of the other heirs of Luis Maria Baca. It is not a fact that a large part of this list was copied by me from a statement of a geneological tree made by a lawyer. Prior to that time I did not see a list of those heirs. In 1875 I was in Pena Blanca, New Mexico. I don't know that lists were made at that time of the heirs. If they were I never knew. I never knew that Prudencio made a list. I don't know that Luis Maria Baca, the grandson of the old gentleman, made a list. I knew Luis Maria Baca personally; he did not know how to read or write. I heard of the Parea lawsuit of 1875. I don't know whether lists of the heirs were submitted at that time or not. I suppose that was a matter which involved the whole Baca family, I don't know whether it did or not. I have never seen the record in [331] that case even to to-day. I have known Mr. Clancy very well. I think that I have known him since he came to New Mexico in 1874 or '76. I have never talked with Mr. Clancy about these heirs; never mentioned them to him that I remember. I don't know whether he was one of the attorneys in the Perea suit or not. I don't know whether he made an exhaustive study of the Baca family or not. He never told me that he had. I don't know anything about Mr. Clancey's investiga-

(Testimony of Marcos C. de Baca.)

tions. If I ever have seen a list that Mr. Clancy made of the Baca heirs, I don't know whether he made it or somebody else; I don't know about that.

I had a conversation myself with Prudencio at the house of my father in 1873; at that time I was asking Prudencio who were the sons of Luis Maria Cabeza de Baca, because I wanted to know who they were. I didn't have any other interest or purpose in view. He gave me the names of the children; later on I presented a list to him, this list here; that was in 1875 and he said that the list was correct; that is what he told me. Now, my purpose in handing him the list at that time was to find out the correct list of the family of Luis Maria Cabeza de Baca for my own use. I did not have any other object. I could not say how old Prudencio was at that time; he was an old man; he may have been seventy-nine or he may have been eighty years; he was a very old man. Both my father and mother were alive in 1873. My father is the same Tomas who made the deed to John S. Watts of 1864. I don't know how much time before 1864 my father represented the Baca heirs. I think that up to 1873 and 1875 he was acting as agent for the heirs of Luis Maria Cabeza de Baca, prior to that time, that is, to 1873 and 1875. I think that he was conversant [332] at that time with the family affairs for say ten years preceding 1873 and 1874. My father died on March 9, 1875. I have never been informed as to whether or not the reputed Antonio, son of Luis Maria Baca, left a will; I don't know whether he left any or not.

(Testimony of Marcos C. de Baca.)

Cross-examination.

(By Mr. BREVILLIER.)

In 1873 and 1875 the surviving members of the family of Luis Maria Baca were not all poor people; there was part of them very poor and some others, those that I knew, were not very poor; they had enough means to live on. I don't know how many of that family could read and write; some of them could not, some of the adults; they were scattered about at that time in various parts of New Mexico; it was the same means of travel that everybody had at that time in New Mexico, at that time. I said that in 1873 of course I would believe everything that my father told me about the family; my father was a truthful man and I think there has never been any more honest man than he was to me; he was a man of business affairs and had business transactions and he had attained some honors in that community. He had held many political offices in the country where he lived at that time; he was looked upon as a big man, not only amongst Mexican people, but amongst the American people if you want to say so, because Judge Watts used to make my father's house his own home and Tomas Cabeza de Baca interested John S. Watts in securing the confirmation of the Las Vegas Grant, and I think furnished the information on which he acted. I don't know whether at that time my father was acting for the entire family or not; he was acting as agent for many of the children of Luis Maria Cabeza de Baca; in that [333] particular affair he was active.

(Testimony of Marcos C. de Baca.)

I heard about a gentleman by the name of Jose Francisco Salas. I don't remember that I knew the man; I have heard the name. I know the name of Ramigio Rivera, I don't remember the man.

(By the COURT.)

Q. When did you first hear that these heirs who claimed to be the heirs of Antonio Baca claimed any interest in the estate, or in this property?

A. I heard it since I can remember, in 1873.

Q. You heard it in 1873? A. Yes, sir.

Q. Did they ever institute any proceeding to recover any part of the estate.

A. I have not heard of any proceeding except what I read in regard to the petition, which I stated had been presented by this woman, Francisca Garviso, after the death of Luis Maria Cabeza de Baca.

Q. Had the Baca heirs disposed of all of the father's holdings in 1873? A. No, sir.

Q. Where was the property or the estate located?

A. It was located at that time—the most of the property was located in what was known as Santa Ana County, which became part of Bernalillo County in 1875.

Q. Did the heirs sell the property? A. Yes, sir.

Q. Was Antonio alive then?

A. No, he was dead, from what I have heard. My information is that Antonio died before his father, before Luis Maria.

Q. Antonio died before his father died?

A. Yes, sir.

Q. You are sure about that?

(Testimony of Marcos C. de Baca.)

A. That is what I have been told.

Q. By whom were you told that?

A. I was told by [334] Prudencio, and most of it by my father, and from what I have seen of the papers of my father at the time, he was dead before his father.

Q. How long prior to the death of his father?

A. It may have been a year or two. I don't know; I couldn't say about that. The petition that was presented to the Executive, or to the Governor, I don't recollect the exact date that the petition was presented, but it does not state when Antonio Baca died.

Q. Do you know of your own personal knowledge whether his children or heirs participated in the division of the property? A. I do not, sir.

Q. Did you ever make any investigation to ascertain? A. No, sir.

Q. Did you ever hear what the result of that partition, that controversy in that partition case was as to who were and who were not recognized by the Court as the heirs at law of Don Luis?

A. No, I did not know it. I did not, sir.

(By Mr. BREVILLIER.)

WITNESS.—I said that Antonio was also known as Jose Antonio. The name of my father was Tomas Cabeza de Baca; he was a man of business affairs and he could read and write; he was not a man of education; he signed his name sometimes "Tomas de Baca" and some other times he signed it "Francisco Tomas de Baca."

Testimony of Philip Contzen.

Philip Contzen was called as a witness on behalf of the defendants Joseph E. Wise, Lucia J. Wise, Margaret W. Wise and Jesse H. Wise, and having been duly sworn and examined *and* [335] testified as follows:

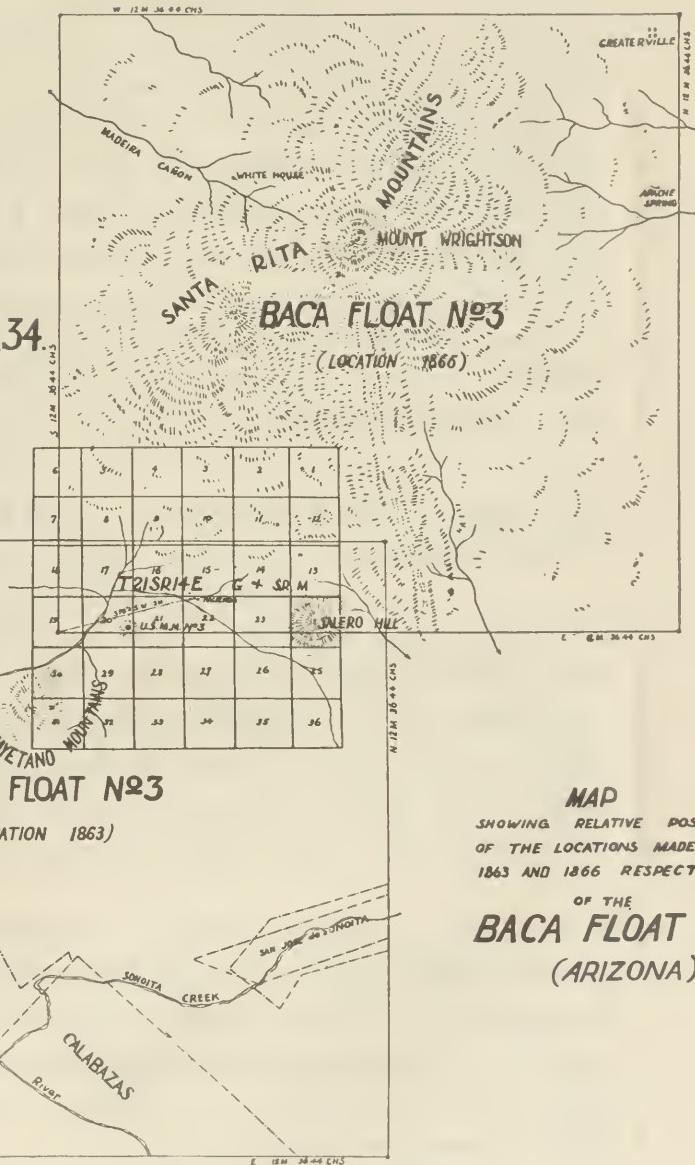
Direct Examination.

(By Mr. FRANKLIN.)

My name is Philip Contzen; age, 47; residence, Tucson, Arizona; profession, civil engineer and surveyor.

I am the same Philip Contzen who made the official survey of Baca Float No. 3 for the Government of the United States about 1905, and whose name is appended to a survey called the "Contzen Survey of Baca Float No. 3." I made a map from a certified copy of my own official survey and also from a certified copy of what is designated as the Roskruge survey of the '66 Location and did plat the same so as to show the relative position of the two different locations, and the map which you now show me is the map which I made; it shows the overlap correctly, according to those two maps.

DEFT. WISE Ex. 34.



Defendants Wise Exhibit 34.

Defendants Wise offered in evidence said map, which accompanies this transcript.

WITNESS.—I am acquainted with the Salero Hill which is marked on my official map. I knew the Salero Hill before I made my official survey. I saw the ruins of the Hacienda de Santa Rita at the time when I made the official survey of Baca Float No. 3; they were there on the ground at that time. On my official map there are platted in the Tumacacari and Calabasas; those names are the names of certain land grants that existed at that time or before, along the Santa Cruz Valley—Mexican land grants.

Q. What kind of lands did these two grants take in, in regard to their being valley or mountain lands?

A. Principally valley lands.

WITNESS.—I knew a Mexican grant called the San Jose [337] de Sonoita; this name San Jose de Sonoita is platted on this map of my official survey. I also made the official survey of the Sonoita grant. My survey of the Baca Float '63 Location takes in the Sonoita Creek which is shown there as Sonoita.

Mr. KINGAN.—Q. Mr. Contzen, on this part of your map about which you have just been testifying and which is marked Baca Float No. 3 Location of 1863, and the old land grant that you spoke of, Tumacacari and Calabasas, is it not a fact that a large part of those Mexican grants is composed of hills and spurs from the Santa Rita Mountains?

(Testimony of Philip Contzen.)

A. Yes, along the side lines of those grants, yes.

Q. Is it not a fact that a large part of the country included in what is known as the '63 Location is composed of spurs and ridges of the Santa Rita Mountains? A. Well, yes, yes.

Mr. FRANKLIN.—Taking the location that you surveyed, does that survey take in any of the mountains proper of the Santa Rita?

A. It takes a range known as "San Cayetano" range, which is probably a spur, a main spur of the Santa Rita Mountains, but it forms a range by itself.

Q. Are you acquainted with the range known as the Santa Rita Mountains? A. Yes, sir, I am.

Q. Now, the range known by that name, does that survey of 1863 take in the Santa Rita Mountains?

A. It does not, only portions of the south slope or, rather, the southwestern slope of the Santa Ritas near the Salero Hill.

Q. About how far down from the north line of the 1863 Location are these hills?

A. Well, about a few miles.

Q. How much? A. About two or three miles.

Q. But the mountains known as the Santa Ritas proper, [338] not the foothills of the mountains, but the mountains themselves, are they within the '63 Location as surveyed by you?

A. They are not.

Mr. KINGAN.—Q. Is it not a fact, Mr. Contzen, that the land from the main ridge of the Santa Rita east to Salero and beyond the Salero consists of the foothills of the Santa Rita Mountains? A. Yes.

(Testimony of Philip Contzen.)

Q. And is it generally known as a part of the Santa Rita Mountains in that district?

A. Well, it is considered as the foothills of the Santa Ritas.

Testimony of Joseph E. Wise.

Joseph E. Wise, one of the defendants, was called as a witness in his own behalf, and on behalf of the defendants Lucia J. Wise, Margaret W. Wise and Jesse H. Wise, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. FRANKLIN.)

My name is Joseph E. Wise, I am one of the defendants in this case. I live at Calabasas, Arizona, I am forty-eight years old. I am acquainted with a place called "Hacienda de Santa Rita," in Santa Cruz County. I have known the place called Hacienda de Santa Rita since March, 1884; I lived there first about April, 1884. I was then about seventeen. The name of my father is Morgan R. Wise. He was living there at that time, not permanently. He was there. My uncle, Solomon B. Wise, was living there more permanently. The Hacienda de Santa Rita consisted of some ruined buildings. There were some buildings that were fit for habitation when I started living there; they needed repairing. I lived in some of the old buildings. I lived at the Hacienda de Santa Rita until 1888, that is about four years. I was acquainted with [399] David W. Bouldin in his lifetime. I am acquainted with George J.

(Testimony of Joseph E. Wise.)

Roskruge. I was present at the Hacienda de Santa Rita when those two gentlemen came there, I think in April—or June in 1887, I heard Mr. Bouldin make statements at that time in my presence in regard to the Baca Float. At that particular visit, or immediately thereafter, Mr. Roskruge came first afoot with several men with his transit on his shoulder I remember, and the conversation with my father first was with Mr. Roskruge and later when Mr. Bouldin came up why he spoke with him. After that I saw Mr. Roskruge do something in regard to making a survey; he started to survey from the old Hacienda west, running west from the ranch and running a chain, chained the ground, going west and left there. But I did not follow him nor did I know exactly what his purpose was only through the conversations. Prior to that time I was familiar with the ground in the neighborhood of the Hacienda de Santa Rita; I was a cowboy out there, that was my vocation; that was my business. I would ride over the country a great deal. Shortly after that I did see monuments that had been recently erected. The monument that drew my attention was one about three miles west of the Hacienda de Santa Rita, on a ridge—a large pile of black malpais rock with a stake in it, or a post, and which I understood was the corner monument of Baca Float—I understood that afterwards. And then thereafter, I found a great many monuments in riding over the country and endeavored to know what they were for. I believed that they were the monuments that Mr. Roskruge had put up marking the

(Testimony of Joseph E. Wise.)

outboundaries of Baca Float as he had surveyed it. I am acquainted with a portion of the outboundaries of Baca Float No. 3, 1866 Location. I have seen the northwest corner monument and other monuments [340] in between the two, which woud be the west line of the 1866 location and some of the monuments running east from the southwest corner or beginning line. That is all. The northwest monument is west of the Picacho rock in the Santa Rita mountains. This is a rock that protrudes very prominently on the west slope of the Santa Rita Mountains and sets out in the valley or mesas between that rock and the Santa Cruz River. That I found to be the northwest corner as surveyed by Mr. Roskruge. I have known the Hacienda de Santa Rita since 1884. I have been there many times. I have a ranch there.

The COURT.—I find that the Hacienda de Santa Rita is a well known place.

WITNESS.—I have occupied portions of the land on Baca Float, as I understood it, prior to 1907, when I purchased the interest from Mr. Wilbur King. At the present time I live at Calabasas on the Santa Cruz River, on the Baca Float. The place where I live is within the limits of the '63 Location of Baca Float. I have been living at that place, or near that place, since 1888.

Q. Now, I direct your attention to the following piece of land; the east half of the northwest quarter and the west half of the northeast quarter of section 35, township 22, range 13 east, Gila and Salt River Meridian, containing one hundred and sixty acres.

(Testimony of Joseph E. Wise.)

Are you familiar with that piece of land?

A. I am.

Q. Have you ever occupied that piece of land?

A. I have.

Mr. KINGAN.—We object to that as immaterial and irrelevant. That the plat of Baca Float No. 3 was filed under the mandate of the Supreme Court last December, 1914; at that time the land was segregated from the public domain; prior to that [341] time there could be no adverse possession; there could be no acquisition of title by prescription, or anything of that sort.

(Received subject to the objection of the plaintiffs.)

WITNESS.—I did fence up in 1889 the particular 160 acres just above referred to; I have been in possession of it since that time; prior thereto I filed on it and proved up on it. I filed in the Tucson land office and made my final proof to the Government so I thought I had title to it. I made my final proof on the filing of that land, about January, 1908. I made a homestead filing in the Land Office in Tucson and about 1908 I made final proof subject to patent whenever they would issue it. I claimed that 160 acres under my homestead filing; I claimed it adversely to everybody; I was cultivating it and using it from 1889 up to date.

Mr. KINGAN.—You claimed under and through the United States? A. I did, that 160 acres.

Mr. BREVILLIER.—In 1907 you took and secured deeds from various persons for an alleged par-

(Testimony of Joseph E. Wise.)

tial interest in the '63 Location of Baca Float No. 3?

A. I did.

WITNESS.—That was the first and only piece of land that I took up under the United States Land Office that is within the limits of Baca Float No. 3; that is under a homestead act; I don't think I ever did try to acquire title under any other law of the United States except that homestead; that is the 160 acres I am talking about.

I had patents for mines and millsites on this 1866 and the 1863 locations. I have a patent for a millsite; the name of that millsite is the Magee Millsite; that patent covers the ruins of the Hacienda de Santa Rita, five acres; [342] that patent covers five acres and a few tenths. I have been in possession of that particular five acres since 1884; the millsite is enclosed and fenced; that fence has been there since 1890. I am the husband of codefendant Lucia J. Wise. I have been married since 1899.

Prior to that time I was acquainted with the mother of my wife, Mrs. Mary E. Sykes; I knew her.

Plaintiffs and defendants Bouldin admit that Lucia J. Wise if called would testify that Mrs. Mary E. Sykes in 1900 for a long time, but, anyway, in 1900 took possession of a forty-acre tract of land being the land described in paragraph 36 of the amended answer of defendants Joseph E. and Lucia J. Wise, as the land of Lucia Wise erected monuments and lived upon it, having a house, cultivating and using it and claiming it; made application for a homestead entry, which was rejected; but she lived there and

(Testimony of Joseph E. Wise.)

claimed it adversely from 1900 until the time of her death, which was about two years ago; and that her daughter Lucia J. Wise, one of the defendants, has taken possession for herself and as executrix of her mother's estate, lives upon the land and has claimed this particular forty acres ever since, the same being monumented on the corners and being cultivated and used by Mrs. Lucia J. Wise, and prior to that, by her mother, and since 1900.

Mr. FRANKLIN.—Q. She claimed this land—she made an effort to make a filing and the government refused, is that correct?

A. She did file, my wife had a filing because there was no one in the family on account of the father being in New York City when the land was opened. He was only upon it for one month, and she was the only one in the family that was capable of making a filing, so she filed, but when I came to prove up on my homestead she relinquished because husband and wife could not both take a homesetad. Then the [343] mother also, who had occupied the land for thirty-five years, she made an effort to file and it was rejected on account of its being withdrawn after 1899.

Mr. FRANKLIN.—Q. After you obtained the deed that is in evidence from Wilbur H. King in 1907, what did you do in regard to taking possession of any part of the Baca Float, 1863, other than the homestead that we have been talking about and your wife's piece?

A. I took possession of a large part and fenced it up.

(Testimony of Joseph E. Wise.)

Q. How much of it did you fence up after you got the King deed?

A. Well, approximately about 8,000 acres.

Q. About how many miles of fence did you erect upon the Baca Float after you got this King deed, up to the date of the bringing of this suit?

A. Why, I think about 25,000 acres.

The COURT.—You mean the foreclosure proceeding under the judicial sale?

Mr. FRANKLIN.—No, your Honor. He got a deed from King.

The COURT.—I remember that you got a deed from King, but did that purport to convey the entire Float?

Mr. FRANKLIN.—No, it purported to convey the entire interest King had. We do not claim—we never did claim the entire Float.

The COURT.—Well, I say, so that interest was segregated, was it, or was it an undivided interest in the whole?

Mr. FRANKLIN.—An undivided interest in the whole.

The COURT.—How would he claim adversely to the other cotenants?

Mr. FRANKLIN.—He did not, but he claimed adversely to everybody else who was not his cotenant. It is for the purpose of notice to my friend, Mr. Bailey's, company if they should happen to claim as innocent purchaser for value without notice, [344] or something of the kind. We were in possession and claiming that property and fencing it up and us-

(Testimony of Joseph E. Wise.)
ing it from 1907.

The COURT.—Then your claim of possession only relates to the possession that you had without color of title?

Mr. FRANKLIN.—That is the only thing to which we lay any claim, under the statute of limitations, under adverse possession.

The COURT.—You abandon the other claims then?

Mr. FRANKLIN.—I have, in regard to his claim to it under a record deed, because he did not pay taxes on it all the time.

The COURT.—I just wanted to get clearly in my mind what you claim.

Mr. FRANKLIN.—My only object now is that kind of a possession which puts anybody upon notice who is claiming that there is any defect in that deed executed by Watts as attorney in fact for his brother and sisters. I do not know that you claim, Mr. Brevillier, to be an innocent purchaser without notice to your company.

Mr. BREVILLIER.—Without notice of what?

Mr. FRANKLIN.—Without notice of anything that was stated in the Watts deed to Bouldin.

Mr. BREVILLIER.—I know that the deed or instrument, whatever you wish to call it, of September, 1884, had been recorded and I had a full copy of it, and I believe the copy was made by Mr. Kingan.

Mr. FRANKLIN.—You had that before the Santa Cruz Development Company purchased whatever it got?

(Testimony of Joseph E. Wise.)

Mr. BREVILLIER.—Yes, sir; I had that and had an abstract with that paper in it.

Mr. FRANKLIN.—And at that time you were the attorney for the Santa Cruz Development Company, were you not, or, anyhow, an attorney of it? [345]

Mr. BREVILLIER.—The Santa Cruz Development Company was not formed until some time thereafter.

Mr. FRANKLIN.—But, anyhow, at the time the Santa Cruz Development Company did acquire its interest you were one of its directors and its attorney and charged with whatever you knew.

Mr. BREVILLIER.—Certainly.

Cross-examination.

(By Mr. KINGAN.)

Q. Prior to 1907 the first fences that you built outside of your 160 acres you built them upon what you believed was the public domain, isn't that a fact?

A. Why, I didn't but I built them and I took them down because the Government brought a suit against me and compelled me to take them down but I believed I had a right to fence them as long as there was a grant there.

Q. You yourself believed it was the public domain at that time, did you not? A. No, sir, I did not.

Q. Isn't it a fact that your only object in acquiring the King and Ireland title so called was to give you a color of title to fence up that float?

A. It is not.

(Testimony of Joseph E. Wise.)

Q. Isn't that a fact? A. It is not.

(Mr. BREVILLIER.)

Q. Mr. Wise, the forty acres you spoke of is a tract of land at Calabases Junction on which your present homestead is located?

A. That is Mary E. Syke's homestead.

Q. And you and your wife have lived there together since 1899? A. Yes.

Q. And since 1907 you have claimed an undivided interest [346] in Baca Float No. 3?

A. I have.

Mr. FRANKLIN.—The Government brought a suit in equity to enjoin him from fencing up, is my recollection, and I know that he took his fences down because he had to, and then he purchased the interest from Mr. Ireland and put fences up and notified the officials of the Government that he claimed an interest in the Baca Float.

The COURT.—But you do not claim any title by reason of possession under these deeds.

Mr. FRANKLIN.—No, your Honor.

Redirect Examination.

(By Mr. FRANKLIN.)

WITNESS.—The letter which you now hand me which is signed Alex F. Mathews, and is addressed to Dr. M. R. Wise; my father's name is M. R. Wise; this letter is dated Lewisburg, December 18, 1900. I first saw this letter about the time it was received by my father at Calabasas and it has been in my possession since. The signature to said letter "Alex F.

Mathews" was the signature of said Alex F. Mathews.

Defendants Wise Exhibit 35.

Counsel for defendants Wise offered in evidence the letter of Alex F. Mathews to Dr. M. R. Wise, dated Lewisburg, W. Va., December 18, 1900.

The same was received in evidence over the objections of counsel for plaintiffs and defendants Bouldin, and was marked by the clerk "Defendants Wise Exhibit 35":

"Dear Sir:

Your letter of the 12th instant received. As you know the Dept. decided that Baca No. 3 was the location of 1863 and not that of 1866; that portions of [347] certain Mexican grants, Calabasas, Tumacacori be deducted from that location and none of the mineral lands passed and must now be segregated. Mr. Vroom representing or claiming under certain heirs of Jno. S. Watts is content with the location of 1863 but is fighting the above two conditions. And you are held to the location of 1863. I concur with him as to those two points and will that far join in his fight but I claim and expect the courts to decide that the true location is that of 1866. I claim under deed from Watts himself and I don't see how there can be any question as to my title for Watts having made deed to Hawley from whom my title comes there was nothing could go to his heirs for them to convey.

Yours truly,

ALEX F. MATHEWS."

Defendants Wise Exhibit 36.

Defendants Wise offered in evidence a certified photographic copy of petition by Alex F. Mathews to the Secretary of the Interior, filed on March 1, 1901, which reads in part as follows:

**"IN THE DEPARTMENT OF THE INTERIOR.
BEFORE THE SECRETARY.**

In re BACA FLOAT NO. 3.

To the Honorable, the Secretary of the Interior:

Your petitioner, Alexander F. Mathews, appealing to the supervising authority vested in the Secretary of the Interior to review, rehear and correct prior decisions of himself and his predecessors, where it appears that error has been committed, respectfully represents that error has been committed in the decision of the Secretary of the Interior in re Baca Float No. 3, of July 25, 1899, in the particular hereinafter set forth.

The matter of Baca Float No. 3 has been before the Interior Department on several previous occasions. Its history has been recited in full in the decision above referred to. It is sufficient here to say that it is one of the five (5) tracts of land authorized to be selected and located by the heirs of Luis Maria Baca under the act of Congress of June, 21, 1866. (12 Stat. 71-72) within three years from that date. * * *

By communication of the Commissioner of the General Land Office, dated May 21, 1866, addressed to the Surveyor General at Santa Fe, New Mexico, reference was made to the previous instructions of

April 9, 1864, to the Surveyor General of Arizona for the survey of the grant under the original selection or location of 1863, and also to the amended application of April 30, 1866, and thereupon further directions were given for the execution of the [348] survey 'in accordance with the amended description of the beginning point which is described in Mr. Watts' application of the 30th of April last, provided by so doing the outboundaries of the ground thus surveyed will embrace vacant land not mineral.' On June 11, 1866, the Surveyor General executed receipt of this communication and on July 2, 1866, Watts was notified of the estimated cost of survey, but no survey was ever executed. From the 21st day of May, 1866, when the Commissioner of the General Land Office allowed the amended description, to the 25th of July, 1899, when the decision complained of was made, no one, within or without the Department ever appears to have questioned the validity of the allowance of the 'amended description.' And the Department itself, in the decision of Secretary Lamar of June 15, 1887, held that 'the claimant must be held to this selection and location' (as under 'amended description.') The land so described was understood to be Baca Float No. 3. No mineral or homestead entries were allowed by the Department upon it and though many applications were made for mineral patents within its exterior lines, they were never entertained. The land as described in the 'amended description' was considered by the Government as private land, and passed from grantee to grantee for large considera-

tions, as Baca Float No. 3, and there was no thought or question that any other portion of the earth was Baca Float No. 3, in law or in fact. The question as to the mineral character of the land was the one upon which it was usually brought before the Department, from the date of the allowance of the 'amended description' up to the 25th of July, 1899, and had reference solely to the land covered by the said 'amended description' and it was not until the decision in *Shaw v. Kellogg*, 170 U. S. 312, that this mineral question was disposed of.

Shortly anterior to May 6, 1899, your petitioner, being the owner of record of Baca Float No. 3, applied 'for the survey of said grant as selected or located in the Territory of Arizona formerly a part of the Territory of New Mexico.' As no question had ever been made of the legality of the allowance of said 'amended description,' and as your Department had previously expressly decided that it was bound by the location as described in said 'amended description,' your petitioner was not heard thereupon; and the decision of July 25, 1899, whereby the allowance of said 'amended description' was declared void and of no legal effect, was made, without your petitioner having an opportunity to present to the Commissioner of the General Land Office and before the Secretary of the Interior his reasons why said 'allowance was valid, legal and effective in law.' Prior to July 25, 1899, your petitioner sold said property taking notes for the consideration of the same, secured by mortgage thereupon, upon which notes default has been made, largely occasioned by

the decision of July 25, 1899, and your petitioner has only recently been in a position to protect his interest in the premises by this appeal to that 'supervisory authority' vested in the Secretary of the Interior for the correction of an error in his decision of July 25, 1899, which has occasioned great [349] damage to your petitioner and which he believes would not have occurred had he been given opportunity to present his reasons touching the validity in law of the allowance of said 'amended description' of said property by order of the Commissioner of the General Land Office of May 21, 1866. * * *

For thirty-three years the Department has never questioned the legality of the allowance of the 'amended description.' It has decided they were bound by it. It has permitted the grant claimants to believe and act upon the fact that it was valid, legal and binding on the Government. The entire record in the case has been many times under consideration and after thirty-three years acquiesce in the rights of the grant claimants to the land described in the 'amended description' the reasons should be strong indeed, to compel the Department to assume a position from which every grantor but the Government would have been estopped in law, and from which the Government is estopped in every moral, if not legal, sense.

Surely the facts must be so clear on their face as to leave no room for doubt and the law so plain as to leave no room for other constructions to justify the Government in taking from the grant claimants the land it has permitted them to buy without question,

and place them upon land which is claimed by others in large part, a portion being by those to whom the Government itself has given patents. If this indisputability of facts and law exists, it is most curious that in the numerous times the cause has been considered it has escaped the notice for thirty-seven years. * * *

The premises considered your petitioner would pray that the said decision of the Hon. the Secretary of the Interior rendered on July 25, 1899, be amended in so much as it held the selection of 1863 (June 17,) binding upon the grant claimants and that it shall be held that the grant claimants are entitled to claim under the amended description of April 30, 1866.

And your petitioner will ever pray, etc.

ALEX. F. MATHEWS.

COURAD H. SYME,

Attorney for Petitioner,

422 5th St., N. W. Washington, D. C."

Counsel for plaintiffs and defendants Bouldin objected to the introduction thereof on the ground that it has no possible purpose in this case and cannot affect the Bouldin heirs; said instrument was received in evidence and was marked by the clerk "Defendants Wise Exhibit 36."

The Court in further ruling upon the introduction in evidence of the said instrument marked "Defendants Wise Exhibit 36," said: [350]

I sustain the objection to it (said instrument) in that it does not impart notice to the plantffs; and admit it for the purpose of enabling the Court to de-

termine, if upon examination I find it sheds any light upon the subject of the question in dispute.

It was stipulated by counsel, so as to avoid the time of calling Col. Syme again that if he were called he would testify that the money with which he acquired his interest in the Baca Float was acquired by him during coverture with earnings of his own in which his wife had no interest; and the same thing in reference to Captain Mathews.

Defendants Wise Exhibit 37.

Counsel for defendants Margaret W. Wise and Jesse H. Wise offered in evidence a deed from Jesse H. Wise to his wife Margaret W. Wise, dated and acknowledged the 28th day of August, 1913. Said instrument was received in evidence and marked by the clerk "Defendants Wise Exhibit 37," and, omitting statement of parties, *habendum*, signatures and acknowledgment, reads as follows:

"have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said Margaret W. Wise, her heirs and assigns, all my right, title, interest and claim, of, in and to all that certain premises described as follows, viz:

All that certain tract of land situate in Santa Cruz County, in the State of Arizona and bounded and described as follows, to wit: Commencing at a point one mile and a half from the Salero Mountain, in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles, thirty-six chains and forty-four links; thence south twelve miles, thirty-six

chains and forty-four links; thence east twelve miles, thirty-six chains and forty-four links; thence north twelve miles thirty-six chains and forty-four links, to the place of beginning. Containing ninety-nine thousand two hundred and eighty-nine and thirty-nine hundredths acres more or less.

Being the same tract of land known as Location No. 3 which was located under and by virtue of the sixth section of an act of Congress passed June 21st, 1860, by [351] the heirs of Luis Maria Cabez de Baca.

The said title having been acquired by the said Jesse H. Wise by deeds from various Baca heirs recently.

Defendants Wise Exhibit 38.

Defendants Wise offered in evidence exemplified copy of a deed dated and acknowledged November 19, 1892, recorded in Pima County, Arizona, December 27, 1892, between John C. Robinson and Powhatan W. Bouldin, and James E. Bouldin. The same was received in evidence without objection, and is in words and figures following, to wit. [352]

THIS INDENTURE, made this nineteenth day of November, A. D., 1892, between John C. Robinson of Binghamton, New York, party of the first part, and Powhatan W. Bouldin and James E. Bouldin, of Austin, Texas, parties of the second part,

WITNESSETH: That whereas, the parties of the first and second parts, by deeds exchanged between them, the said parties of the first and second parts, for the consideration therein specified, have granted

and conveyed, each to the other, their heirs and assigns (the party of the first part, by deed executed at Binghamton, New York, dated twenty-eighth day of June, A. D., 1892, and the parties of the second part by deed executed at Austin, Texas, dated twenty-second day of August, A. D., 1892), one undivided half interest in all their rights, titles, property, claims and demands whatsoever, from whatever source derived, and in whatever manner acquired, in and to a certain tract of land, situate lying and being in the Santa Rita mountains in the Territory of Arizona, containing one hundred thousand acres, be the same more or less; bounded and described as follows, viz: Beginning at a point three miles west by south from the building known as the Hacienda de Santa Rita; running thence north, twelve miles, thirty-six chains and forty-four links; running thence east twelve miles, thirty-six chains and forty-four links; running thence south twelve miles, thirty-six chains and forty-four links to the place of beginning. The said tract of land being known as Location Number three (3) of the Baca series; together with one undivided half interest in all and singular the tene-ments, hereditaments and appurtenances thereunto belonging; and also one undivided one-half interest of all the estate, right, title and interest, as well in law as in equity, of the said parties of the first and second part in and to the above-described pre-mises, and of every part and parcel thereof, in what-ever manner acquired by the said parties [353] And this indenture farther witnesseth, that in order to make a full, perfect and absolute partition of the

above-described premises, and in order that each of the said parties of the first and second part may hold their share under the above-recited deeds, in severalty, the said party of the first part does hereby grant, assign, release and confirm to the said parties of the second part, their heirs and assigns forever, one-half of the above-described premises, bounded and described as follows, viz: Beginning at a point six miles, eighteen chains and twenty-two links north of a point, three miles west by south from the building known as the Hacienda de Santa Rita, running thence North six miles, eighteen chains and twenty-two links; running thence east twelve miles, thirty-six chains and forty-four links; thence south six miles, eighteen chains and twenty-two links; running thence west twelve miles, thirty-six chains and forty-four links to the place of beginning. The said tract of land bounded and described in the sentence immediately foregoing this being the northern half of the tract known as Location number three (3) of the Baca series, together with all and singular the tene-ments and appurtenances thereunto belonging; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the party of the first part, in and to the above-described premises and every part and parcel thereof, with all the appurtenances thereof. To have and to hold said claims and rights and all and singular the above-mentioned and described pre-mises, unto the said parties of the second part, their heirs and assigns forever. In Witness Whereof, the said party of the first part has hereunto set his hand

and seal on the day and year first above written.

In the presence of

JNO. C. ROBINSON,
D. L. BROWNSON. [354]

**Evidence Introduced by Defendant Santa Cruz
Development Company.**

Santa Cruz Development Company Exhibit 1.

Santa Cruz Development Company offered in evidence a certified copy of petition of John S. Watts, attorney for "petitioners, the surviving heirs at law of one Luis Maria Cabeza de Baca," filed in 1857, to the Surveyor General of New Mexico, asking for the confirmation of the Las Vegas Grant, under the act of Congress of July 22, 1854.

Defendants Wise objected on the ground that it was incompetent, irrelevant and immaterial; that it in no way proves heirship and cannot throw any light upon the subject; that the statements were made by attorney—his petition or his complaint are not evidence against anybody except, perhaps, against himself.

Objection overruled, to which ruling of the Court defendants Wise then and there duly excepted. The paper was received in evidence and so far as material reads as follows:

"Territory of New Mexico,

County of Santa Fe.

To the Hon. Wm. Pelham, Surveyor General of the

Territory of New Mexico, under the act of Congress approved 22d June, A. D. 1854:

Your petitioners the surviving heirs at law of one Luis Cabeza de Baca, deceased, would respectfully

state that on the 16th day of January, 1821, the Provincial Deputation of the State of Durango granted to the ancestor of your petitioners, Luis Cabeza de Baca, a tract of land called 'Las Vegas Grandes.' . . . Your petitioners further state that it will appear by refrence to said grant that it was made to the said Luis Maria Cabeza de Baca and his male children and vested [355] him and his male children with an absolute title to said lands. . . . Your petitioners further state that Luis Maria Cabeza de Baca has long since departed this life and the only male children of the said Luis Maria Cabeza de Baca now living are the following, to wit: Luis Baca, Prudencio Baca, Jesus Baca the 1st, Felipe Baca, Jesus Baca the 2d, Domingo Baca and Manuel Baca. Your petitioners further state that the following sons of Luis Maria Cabeza de Baca are dead, to wit: Juan Antonio Baca, Jose Baca, Jose Miguel Baca, Ramon Baca, and Mateo Baca, and at the time of their decease they left the following children and heirs at law them surviving, to wit: Juan Antonio Baca left him surviving the following children, Jesus Maria Baca, Francisco Tomas Baca, Incarnacion Baca, Jose Baca, Josefa Baca, Guadalupe Baca, Altagracie Baca, Nicholasa Baca, Tomas Baca & Trinidad Baca. Jose Baca left him surviving the following children: Antonio Baca, Felipe Baca, Jose Maria Baca, Francisco Baca, Fernando Baca & Polonio Baca. Jose Miguel Baca left him surviving the following children, to wit: Diego Baca, Quirina Baca, Rumaldo Baca, Guadalupe Baca, Paulina Baca & Martina Baca. Ramon Baca left

him surviving the following child, to wit: Ignacio Baca. Mateo Baca left him surviving the following children, to wit: Luis Baca, Alejandro Baca, Juan Dios Baca and Martin Baca. Your petitioners further state that the foregoing list contains all the surviving heirs of the said Luis Cabeza de Baca, deceased, known to your petitioners and they are all residents of the Territory of New Mexico." . . .

"All of which is respectfully submitted,

JNO. S. WATTS,
Atty for Petitioners."

Santa Cruz Development Company Exhibit 2.

Santa Cruz Development Company offered in evidence [356] a certified copy of the affidavits of Jose Francisco Salas, Manuel Antonio Baca, Remigio Revira, Joab Houghton and Jose Maria Montoya, taken before the surveyor general of New Mexico in the matter of Las Vegas Grant in connection with the preceding exhibit. Objected to by defendants Wise on the ground that it was immaterial.

Admitted subject to objection of defendants Wise, to which ruling the said defendants then and there duly excepted. Said instrument was marked by the clerk, "Defendant Santa Cruz Development Company's Exhibit 2," and so far as material, the Salas affidavit reads as follows: [357]

TOMAS CABEZA de BACA.

JOSE FRANCISCO SALAS sworn:

Question. Where do you reside, are you in any way related to the claimants, or have you any interest in the claim?

(Testimony of Marcos C. de Baca.)

Answer. I live at Pena Blanca; I am not related to any of the claimants, neither have I any interest in the claim.

Question. Did you know Luis Maria Cabeza during his lifetime? Answer. I did.

Question. When did he die?

Answer. I saw him die and was present when he was buried, but do not recollect exactly how long ago it was but think it has been twenty-five years ago more or less.

Question. When did he die?

Answer. He was killed by a soldier under the Mexican Government. I was informed that he was killed on account of having some contraband property in his possession belonging to an American which he refused to deliver up.

Question. Do you know Luis Baca, Prudencio Baca, Jesus Baca, Sr., Felipe Baca, Jesus Baca, Jr., Domingo Baca and Manuel Baca?

Answer. I know them all.

Question. Whose children are they?

Answer. They are sons of Don Luis Baca.

Question. Are these the only living sons of Luis Maria Cabeza de Baca? Answer. They are.

Question. Were you acquainted with Juan Antonio Baca, Jose Baca, Jose Miguel Baca, Ramon Baca and Mateo Baca?

Answer. I did know them; they are all dead. They were sons of Don Luis Baca.

Question. Did Juan Antonio Baca leave any children at [358] his death?

(Testimony of Marcos C. de Baca.)

Answer. He did; they were Jesus Maria Baca, Francisco Tomas Baca, Incarnacion Baca, Jose Baca, Josefa Baca, Guadalupe Baca, Altagracia Baca, Nicolas Baca, Tomas Baca and Trinidad Baca.

Question. Did Jose Baca leave any children at his death? Answer. He did not.

Question. Did Jose Miguel Baca leave any children at his death?

Answer. He did; they were Diego Baca, Quirino Baca, Rumaldo Baca, Guadalupe Baca, Pauline Baca and Martina Baca.

Question. Did Ramon Baca leave any children at his death?

Answer. He did; they are Ignacio and no other.

Question. Did Mateo Baca leave any children at his death?

Answer. He did; they are Luis Baca, Alejandro Baca, Juan de Dios Baca and Martin Baca.

Question. Whose children were Antonio Baca, Felipe Baca, Jose Maria Baca, Francisco Baca, Fernando Baca and Pelonia Baca?

Answer. They were the children of Jose Baca.

Question. Are the above-mentioned all the children and grandchildren of Luis Ma. Cabeza de Baca? Answer. They are.

Question. Do you know the place situated in this territory and known as the Las Vegas Grandes?

Answer. I do.

Question. Do you know of its having been in the possession of Don Luis Maria Cabeza de Baca and if so for how long?

(Testimony of Marcos C. de Baca.)

Answer. They were in his possession. I had cattle [359] there belonging to Don Antonio Baca for sixteen years; we were driven off and returned again when the Indians became quiet. Don Luis Maria resided there for the space of ten years.

Question. What improvements did he make upon the place?

Answer. He had a hut built at the Loma Montosa, where himself and the cattle remained for a greater portion of the time. I did not see any other improvements; I had charge of the sheep herd and sometimes would come to the hut, for the greater portion of the time I was in another direction with the sheep.

Question. When did you go there for the first time?

Answer. It must have been between the years 1822 and 1823.

Question. Was any other person in possession or had any other person made any improvements on the land when you went there, except Don Luis and his sons?

Answer. I saw no other person there or any other improvements made.

Question. What was the cause of the place being abandoned?

Answer. Because the Indians drove us off.

Question. What amount of stock was there when you were driven away?

Answer. I had 3,000 sheep. I do not know how much horned cattle were there. The men had cows

(Testimony of Marcos C. de Baca.)
there that they milked.

Question. Did they cultivate any of the land?

Answer. They did not.

Question. Were there any horses or mares kept there? Answer. They had a great many there.

Question. In what year were they driven away by the Indians? [360]

Answer. I do not remember in what year.

Question. Are not some of the heirs above-mentioned still under 21 years of age?

Answer. They are all over 21 years of age.

Question. How old is the youngest one of the heirs?

Answer. There are many of the grandchildren under age yet.

His
JOSE FRANCISCO X SALAS.
Mark

(Subscribed and sworn to.)

Santa Cruz Development Company Exhibit 3.

Santa Cruz Development Company introduced in evidence without objection a duly certified copy of a certificate of selection dated June 21st, 1863, by John S. Watts, attorney for the heirs of Luis Maria Cabeza de Baca, of Location No. (5) Five, Baca Series, located in New Mexico.

Santa Cruz Development Company Exhibit 4.

Santa Cruz Development Company offered in evidence without objection a properly exemplified copy of the decree of the Supreme Court of the District of Columbia, which was concededly affirmed by the

United States Supreme Court, the mandate of the United States Supreme Court being issued on or after November 22d, 1914. [361]

Decree of the Supreme Court of the District of Columbia.

This decree without the caption reads as follows. the nature of the case requiring that it be printed in full:

“This cause came on to be heard at this term and was argued by counsel; and thereupon upon consideration thereof it is by the Court this 3d day of June, 1913: ORDERED, ADJUDGED AND DECREED, that the title to the land selected and located by the heirs of Luis Maria Cabeza de Baca, on June 17, 1863, under the grant made to them by the act of Congress of June 21, 1860, and known as Baca Float No. 3, passed out of the United States and vested in said heirs on April 9, 1864; and it is further ORDERED, ADJUDGED AND DECREED, that thereafter the Land Department of the United States ceased to have jurisdiction over said land, except for the purpose of surveying the boundaries thereof, in order to segregate the same from the public lands of the United States; and it is further ORDERED, ADJUDGED AND DECREED, that the plaintiffs herein or some of them, have shown sufficient title in themselves to said land, to enable them to maintain this suit; and it is further ORDERED, ADJUDGED AND DECREED, that the defendants Franklin K. Lane, Secretary of the Interior, and Frederick Deinnett, Commissioner of the General Land Office, and each of them, and their successors

in office, and all persons claiming to act under the authority or control of either of them be, and they are hereby required forthwith to place on file as muniment of the title which passed to the heirs of said Baca aforesaid, and for future reference as required by law, the field notes and plat of survey, made by Philip Contzen, under contract No. 136, dated June 17, [362] 1905, for the purpose of defining the boundaries of said land and segregating the same from the public lands of the United States. And it is further ORDERED, ADJUDGED AND DECREED that the defendants Franklin K. Lane, Secretary of the Interior, and Fred Dennett, Commissioner of the General Land Office, and each of them, and their successors in office, and all persons claiming to act under the authority, direction or control of either of them, be and they hereby are enjoined from proceeding in any manner in the matter of the alleged homestead entry of Henry Ohm, Tucson, No. 3024, Feb. 2, 1899, or in the matter of any of the other entries set out in exhibit "A" to the answer herein, or in any other matter affecting said land, except to file the survey, as herein directed."

Santa Cruz Development Company Exhibit 5.

Defendant Santa Cruz Development Company next offered in evidence a proper deed dated October 26, 1899, from J. Howe Watts and others, heirs of John S. Watts, to John Watts for the 1863 location of Baca Float No. 3 by the correct metes and bounds; said deed being recorded in the office of the County Recorder of Santa Cruz County, on August 2, 1909.

Counsel for plaintiffs and for the defendants

Bouldin objected to the introduction in evidence of said instrument on the ground that the same was immaterial, irrelevant and incompetent, in that the ancestor of the purported grantors, John S. Watts, had conveyed all the title to Hawley in 1870, and therefore, there was nothing to convey.

The instrument was received in evidence subject to said objection. [363]

Santa Cruz Development Company Exhibit 6.

Santa Cruz Development Company offered in evidence a proper deed dated February 3, 1913, recorded June 18, 1913, from John Watts and wife to James W. Vroom for the 1863 location of Baca Float No. 3, by correct metes and bounds.

Plaintiffs and the defendants Bouldin objected, for the reasons hereinbefore stated. Received in evidence by the Court subject to said objections.

Santa Cruz Development Company Exhibit 7.

Santa Cruz Development Company then offered in evidence a proper deed dated June 11, 1913, recorded February 3, 1914, from James W. Vroom and wife to the Santa Cruz Development Company for the 1863 location of Baca Float No. 3, by correct metes and bounds.

Plaintiffs and defendants Bouldin interposed the same objection as heretofore set forth. Received in evidence subject to said objections.

It was conceded and stipulated in open court that prior to the date of the last-mentioned deed, to wit: prior to June 11, 1913, the Santa Cruz Development Company was duly incorporated under the laws of the State of Arizona, and that its articles of incor-

poration were duly filed and published according to the statute and that it was authorized to do business and was authorized to acquire and hold real estate.

Santa Cruz Development Company Exhibit 8.

Santa Cruz Development Company offered in evidence a certified copy of a deed from Alex F. Mathews and S. A. M. [364] Syme to the Arizona Copper Estate, dated and acknowledged August 3, 1899, recorded on August 12, 1899, conveying Baca Float No. 3.

Objected to by plaintiffs and defendants Bouldin on the ground that it is immaterial, incompetent and irrelevant.

For the ruling on this see ruling in Santa Cruz Development Company Exhibit 9.

Santa Cruz Development Company Exhibit 9.

Santa Cruz Development Company then offered in evidence an exemplified copy of a deed dated July 25, 1914, duly acknowledged, recorded August 10, 1914, from the Arizona Copper Estate to Abbie M. Fowler, purporting to convey to her Baca Float No. 3 by correct metes and bounds of the 1863 location, without any mention of liens and incumbrances.

Plaintiffs and defendants Bouldin objected on the ground that it is immaterial, irrelevant and incompetent and as a conveyance made after the beginning of this action which had nothing to do with this lawsuit, and that it purports to convey the entire float and they had only title to the south half.

The COURT.—I will change my ruling. I will

sustain the objection to this deed and the one just preceding.

Mr. REVILLIER.—May I have an exception to your Honor's ruling and file the papers nevertheless?

The COURT.—No, you may offer the paper, but this is not the taking of oral testimony under Rule 46. In other words, if that deed is offered, we have got to go through the whole proceeding that we have already gone through in the other case. They will contend that there was a reconveyance of that title. [365] That is the very issue I have got to decide in that case, and I cannot see that it jeopardizes the right of the Santa Cruz Development Company in this case one particle.

Mr. REVILLIER.—I will take an exception to that.

Santa Cruz Development Company Exhibit 10.

Santa Cruz Development Company then offered in evidence an original deed from Abbie M. Fowler to the Santa Cruz Development Company dated August 1, 1914, and duly acknowledged and recorded on March 29, 1915, conveying the 1863 location of Baca Float No. 3 by correct metes and bounds.

The COURT.—I sustain the objection to that on the same grounds.

Santa Cruz Development Company then and there duly excepted to the ruling of the Court.

Mr. REVILLIER, Counsel for Santa Cruz Development Company then said:

If the Court please I ask leave to amend my answer *nunc pro tunc* in order to set this up, the title

acquired in the Copper Estate transaction, and I ask your Honor to hold your ruling in abeyance until after the decree in the Copper Estate case.

The COURT.—The motion is denied.

Mr. BREVILLIER.—And I except.

Santa Cruz Development Company Exhibit 11.

Santa Cruz Development Company offered in evidence as a declaration against the interests of the Bouldin defendants and of the defendant Joseph E. Wise, the latter (Exhibit 1 for identification) dated November 25, 1884, written by David W. Bouldin [366] to John Watts, and referred to in the deposition of John Watts, hereinbefore printed.

Objected to by defendants Wise and Bouldin as an attempt to vary, alter or modify the terms of a valid written instrument, and because the gentleman refused to submit that to the attorney for Joseph E. Wise at the time of the examination of John Watts when his deposition was taken, so there was no opportunity of examining John Watts in regard to it.

Objection sustained.

Mr. BREVILLIER.—I take an exception. May the extract I claim is pertinent be read in and taken under Rule 46? ..

The COURT.—Yes.

Said extract reads as follows:

“My being sick has very materially interfered with my business arrangements and has also been the cause of my not sending you the certified copy of our agreement. Had I thought it was very material, or that you thought so,

I should have taken pains to have it copied, certified and sent to you. I expected every day that I would be well enough in a day or two to return and deliver it to you in person. I hope this explanation will be entirely satisfactory, and though I enclose you the certified copy as you request in your letter, I hope to have the pleasure to see you sometime next week in Santa Fe.” [367]

Santa Cruz Development Company Exhibit 14.

Santa Cruz Development Company offered in evidence a photographic copy of a map accompanying the letter from the Commissioner of the General Land Office, to Hon. Thomas F. Bayard, United States Senate, dated May 16, 1884, showing thereon the conflict between the 1863 and 1866 locations of Baca Float No. 3.

Santa Cruz Development Company Exhibit 13.

Santa Cruz Development Company then offered in evidence a certified copy of a plat of Baca Float No. 3 accompanying the report of Frank S. Ingalls, United States Surveyor General in 1905, showing the location of the 1866 location in the Santa Rita Mountains.

Santa Cruz Development Company Exhibit 15.

Santa Cruz Development Company introduced in evidence an extract from a book entitled “Adventures in the Apache Country, tour through Arizona and Sonora,” by J. Ross Brown, published in 1869 by Harper Brothers, New York, incorporating a statement from Chas. D. Poston that between 1856 and 1868, he had lived for a considerable time at

Tubac, within the 1863 location of Baca Float No. 3; had extensive mineral interests in the Santa Rita Mountains; had visited the Salero Mountain and the Hacienda de Santa Rita and also Gandara, the claimant and party in possession of the Tumacacari and Calabasas grant, which he said comprised the Santa Cruz valley land and grazing land contiguous thereto. [368]

Santa Cruz Development Company Exhibit 17.

Santa Cruz Development Company introduced in evidence an exemplified copy of a power of attorney, dated May 1, 1864, recorded in New Mexico in 1871, from the heirs of Luis Maria Cabeza de Baca to Tomas C. de Baca, an exemplified copy of which was recorded in Santa Cruz county on February 3rd, 1915, authorizing him to convey to John S. Watts the property in suit.

ARGUMENT.

By direction of the Court, argument was then had on the Hawley deed.

The COURT.—To enable me to interpret the language used in the conveyance, and especially in the conveyance from Watts to Hawley, I have considered the evidence and the circumstances under which the deed was executed and also the testimony introduced by the defendants showing the subsequent acts, conduct and declarations of the parties. The rule to be followed by a court of equity in construing a deed is that [369] the real intent of the parties must be gathered from the whole transaction, including the general as well as the particular description, which should be construed so as to

give effect to the whole and every part of the instrument.

There is no doubt in my mind about what was intended to be conveyed by Mr. Watts, nor is there any doubt in my mind as to what was actually conveyed by the deed of 1870. It is clear to my mind that it was intended to convey and did convey the Baca Float of 1863 as described in the conveyance from the Baca heirs to Watts on May 1st, 1864. I think that the language used indicates that the dominant idea in the mind of the grantor, Watts, when the deed was made was of Baca Float No. 3 of 1863, conveyed to Watts by the Baca heirs in 1864, and not of the particular lines or marks by which it might be described.

I think it cannot fairly be said that Watts, having obtained the deed from the Baca heirs on May 1st, 1864, which was executed by nearly all of the heirs in person and by certain of them, and by other persons purporting to act for certain of the heirs who did not sign, that Watts afterwards conceived the idea of having all of the heirs execute the deed of 1871 to him, and thereby convey title to him, for his, Watts', benefit, and not for the benefit of his grantee Hawley. I do not think that there is anything in the testimony to indicate that such was the purpose and intent of Watts at the time he obtained the deed of 1871.

I am likewise of the opinion that if it be admitted that certain of the Baca heirs did not properly execute the original deed to Watts, and thereby convey their respective interests therein, and that the

people who signed that ancient document weren't authorized on behalf of those who did not sign to execute it, that their subsequent ratification of such signatures and conveyance in [370] the deed of 1871 to Watts, and that the title thereby acquired by Watts inured to the benefit of Watts' grantee, Hawley. That expresses my idea as to the legal effect of the conveyance mentioned.

Mr. Joseph W. Bailey, counsel for the defendants Bouldin, then said:

"I am of the opinion that this settles the matter. I am thoroughly satisfied myself that the Court is right in its judgment or opinion just announced. I think an offer now to prove our title under the 1884 deed and an objection by the other side, sustained, would leave us in a position where our rights would be protected in the event of a reversal, and at the same time, save further time."

The attention of the Court was then called to the instrument of Sept. 30, 1884 (Defendant Wise Exhibit 17), received subject to the objections of the plaintiffs and the Santa Cruz Development Company. The Court now sustained the objections of the plaintiffs.

Exceptions were duly taken by all the Wise defendants, the Ireland heirs (the intervenors) and Santa Cruz Development Company.

Mr. WELDON M. BAILEY.—We except also out of an abundance of caution.

Thereupon Mr. Franklin, counsel for defendants Joseph E. Wise and Lucia J. Wise and for the de-

fendants, Margaret W. Wise and Jesse H. Wise, moved the Court to strike out each and all of the following exhibits of the plaintiffs on the ground that they do not describe the property in dispute, to wit: Plaintiffs' Exhibits "U," "V," "W," "X," "Y," "Z," "AA," "BB," "CC," "DD."

The Court denied said motion and thereupon the defendants by their counsel duly excepted to the ruling of the Court. [371]

Thereupon defendant Santa Cruz Development Company moved the Court to strike out and exclude from the evidence, Joseph E. Wise Exhibit 36, being the deed of date November 19, 1892, from Robinson to Bouldin, on the ground that it is incompetent, irrelevant and does not affect the property in this action. Mr. MacKay, on behalf of the heirs of Ireland, Intervenors, joined in said motion.

The said motion was denied by the Court on the ground that no objection was made at the time and it is too late now, to which ruling of the Court the said defendants mentioned then and there duly excepted. [372]

Evidence Introduced by Defendants Bouldin.

Defendants Bouldin Exhibit 1.

Defendants Bouldin offered in evidence an exemplified copy of the record of a deed from Powhatan W. Bouldin to Dr. M. A. Taylor, dated the 7th day of November, 1894, and recorded November 26, 1894. Santa Cruz Development Company and defendants Wise objected for the reason that it does not cover the property in controversy.

Objection overruled, to which ruling said defend-

ants then and there fully excepted.

The description in said instrument reads as follows: All my right, title, property, interest, claim or demand whatsoever, from whatever source derived and in whatever manner derived, my said interest being an undivided one-half interest in and to the north one-half of the tract of land known as Location No. 3 of the Baca series, situate, lying and being in the Santa Rita Mountains, in Pima County, Territory of Arizona, containing in said North one-half 50,000 acres of land, being more particularly described as follows, to wit:

Beginning at a point six miles, 18 chains and 22 links north of a point three miles west by south from the building known as the Hacienda de Santa Rita, thence north 6 miles, 18 chains and 22 links; thence east 12 miles, 36 chains and 44 links; thence south 6 miles, 18 chains and 22 links; thence west 12 miles, 36 chains and 44 links, to the place of before follows: [374]

Defendants Bouldin Exhibit 2.

Defendants Bouldin offered in evidence a Certificate of Sale from Joseph B. Scott, Sheriff of Pima County, Arizona, to Lionel M. Jacobs, dated the 16th day of June, 1894, and an assignment of same to Dr. M. A. Taylor, dated December 4, 1894, and recorded December 5, 1894, said Certificate of Sale being as follows: [374.]

I, Joseph B. Scott, Sheriff of the County of Pima, Territory of Arizona, do hereby certify that under and by virtue of an order of sale, issued out of the District Court of the First Judicial District of the

Territory of Arizona, in and for the County of Pima, in the action of Lional M. Jacobs, plaintiff against Powhattan W. Bouldin, defendant, rendered under a judgment in said action rendered on the 6th day of May, 1894, by said District Court, and which said order of sale was duly issued and attested on the 22d day of May, 1894, and was to me, as such sheriff duly directed and delivered, and whereby I was commanded to sell the property hereinafter described, or so much thereof as may be necessary, according to law, and to apply the proceeds of such sale towards the satisfaction of the judgment in said action, amounting to these sums of \$258.70, and \$30, costs, and interest thereon. I duly levied on, and on the 16th day of June, 1894, at 11 o'clock of said day at the court house door of the County Court House, in the City of Tucson, in said County of Pima, I duly sold at public auction according to law, and after due and legal notice, to Lionel M. Jacobs, who made the highest and best bid therefor, at such sale for the sum of three hundred and twenty-seven and 60/100 Dollars lawful money of the United States, which was the whole sum paid by him for the real estate in said order of sale, and herein described as follows, to wit: All of the following described real property situate in the County of Pima, Territory of Arizona and more particularly described as follows, to wit, Location number three (3) being one of the first tracts of land selected and located by virtue of and in accordance with an Act of Congress of the United States approved June 21, 1860, entitled an Act to confirm certain private land claims in New

Mexico," and found in Volume 12, page 72, of the United States Statutes at Large by the heirs of Don Luis Maria Cabeza de Baca, and said [375] number three (3) being described as follows, to wit: That certain tract of land situate in the Territory of Arizona, formerly Dona Ana County, New Mexico, and more particularly described as follows. Beginning at a point one mile and a half from the Salero mountain in a direction north 45 degrees east of the highest point of said mountain, running thence from said beginning point, West 12 miles, 36 chains and 44 links, thence south 12 miles, 36 chains and 44 links, thence east 12 miles, 36 chains and 44 links, thence north 12 miles, 36 chains and 44 links, to the place of beginning, and containing 99,289 39/100 acres more or less. And all the right, title and interest of the said defendant, Powhattan W. Bouldin had in the foregoing described real property on the 2d day of March, 1894. Also all the right, title and interest, claim and demand of the said defendant Powhatan W. Bouldin, in and to that certain tract of land situate in said County of Pima, Territory of Arizona, commonly known and called Baca Float No. 3 (Three) and containing 99,289 39/100 acres, more or less, said tract and parcel of land being more particularly described as follows, to wit: Beginning at a point three miles west by south from the building known as the Hacienda de Santa Rita, running thence from said beginning point north 12 miles 36 chains and 44 links, running thence east 12 miles, 36 chains and 44 links, running thence south 12 miles, 36 chains and 44 links, running thence west

12 miles, thirty-six chains and 44 links, to the place of beginning, as it existed on the 2d day of March, 1894. And I further certify that I received no directions whatsoever from the said judgment debtor, Powhattan W. Bouldin or from anybody representing him, designating the order in which said parcels of land should be sold, and that I therefore deeming it for the best interest of all parties concerned did sell all of said property in one parcel, and that the said sum of three hundred and twenty-seven and 60/100 dollars, [376] in lawful money of the United States was the highest bid made, and the whole price paid therefor, and that the same is subject to redemption in six months pursuant to the statute in such cases made and provided. Executed in duplicate. Given under my hand this 16th day of June, 1893.

JOSEPH B. SCOTT,
Sheriff of Pima County, Arizona Territory.
Tucson, Ariz., Dec. 4th, 1894.

In consideration of the sum of Three Hundred and Fifty Dollars to me in hand this day paid by M. A. Taylor of Travis County, Texas, the successor in interest of Powhattan W. Bouldin, above named, I herewith assign to said M. A. Taylor the within certificate of sale, and said Taylor as the successor of said Powhattan W. Bouldin, having this day redeemed the above-described property from the sale by the sheriff to me, as above set forth, and I having on this day executed to said M. A. Taylor a deed or certificate of redemption therefor.

Witness my hand this 4th day of December, 1894.

LIONEL M. JACOBS,
By BARRON M. JACOBS,
His Attorney in Fact.

Witness:

SELIM M. FRANKLIN.

Recorded in Book 5 Misc. Records, page 270, et seq. Dec. 5, 1894. [377]

Defendants Bouldin Exhibit 3.

Defendants Bouldin offered in evidence a deed from Lionel M. Jacobs to M. A. Taylor, dated the 4th day of December, 1894, and duly recorded on December 5, 1894, to which instrument the Santa Cruz Development Company and defendants Wise objected on the ground that the same does not cover the property in controversy. Said objection was overruled, to which ruling of the Court said defendants then and there duly excepted.

The description in said deed reads as follows:

"all my right, title and interest in and to the following described tract, lot or parcel of land known as Location No. 3 of the Baca Series situated, lying and being in the Santa Rita Mountains in the County of Pima and more particularly described as follows: Beginning at a point 6 miles, 18 chains and 22 links north of a point 3 miles west by south from the building [378] known as Hacienda de Santa Rita, running thence north 6 miles, 18 chains and 22 links, thence east 12 miles, 36 chains and 44 links, thence south 6 miles, 18 chains and 22 links, thence west 12 miles, 36 chains and 44 links to

the place of beginning and being the northern half of the tract known as Location No. 3 of the Baca series. Being same land conveyed to me by the Sheriff of Pima County, Arizona, on June 16, 1894, by sale under execution issued on judgment recovered by me against said P. W. Bouldin."

Defendants Bouldin Exhibit 4.

Defendants Bouldin offered in evidence a deed from James T. Bouldin to M. A. Taylor, dated the 25th day of April, 1895, and acknowledged on the same day and recorded April 30, 1895. Santa Cruz Development Company and defendant Wise objected on the ground that the same does not cover the property in controversy. Said objection was overruled, to which ruling of the Court said defendants then and there duly excepted.

The description in said instrument reads as follows:

"an undivided one-half interest being all of my interest in and to the following described land formerly situated in Dona Ana County, in the Territory of New Mexico, but now situate, lying and being in the County of Pima, Territory of Arizona, to wit: Beginning at a point 6 miles, eighteen chains and twenty-two links north of a point three miles west by south from a building known as the Hacienda de Santa Rita; running thence north 6 miles, 18 chains and 22 links; running thence east 12 miles, 36 chains and 44 links; running thence south 6 miles, 18 chains and 22 links; running thence west 12 miles, 36

chains and 44 [379] links to the place of beginning. The said tract of land bounded and described in the sentence immediately preceding this is the north one-half of the tract known as Location Number 3 of the Baca series, and sometimes called Baca Float or Grant Number 3 and contains fifty thousand (\$50,000) acres more or less. It being my intention to grant and convey to said M. A. Taylor, his heirs and assigns forever, all my right, title, interest, claim and demand, of whatsoever kind and nature in and to an undivided one-half interest in the north one-half of Baca Float Number 3, from whatsoever sourcee and in whatsoever manner derived, whether by, from or through heirs of Luis Maria Baca, John C. Robinson, the Government of the United States or otherwise."

Defendants Bouldin Exhibit 5.

Defendants Bouldin offered in evidence a deed from M. A. Taylor to Daisy Belle Bouldin, dated the 28th day of November, 1896, acknowledged on the same day and recorded the 22d day of December, 1896. Defendant Santa Cruz Development Company and defendant Wise objected on the ground that the same does not cover the property in controversy. Said objection was overruled and said defendants then and there duly excepted.

The description in said deed reads as follows:

"all my right, title and interest and the right, title and interest of the said community estate in and to the Placer mining lands in the Santa Rita Mountains, in Pima County, Arizona, and

described as follows: Beginning at a point 6 miles, 18 chains and 22 links north of a point three miles west by south from the building known as the Hacienda de [380] Santa Rita, running thence north 6 miles, 18 chains and 22 links; thence east 12 miles, 36 chains and 44 links; thence south 6 miles, 18 chains and 22 links; thence west 12 miles, 36 chains and 44 links to the place of beginning, and being the northern half of the tract known as Location No. 3 of the Baca series, being the same land described in deed by P. W. Bouldin to me, dated November 7, 1894, and recorded in real estate records of said County, Book 26, pages 754 and 755; also described in deed of James E. Bouldin to me dated April 25, 1895, and recorded in deed records of real estate in said County, in Book 27, pages 75 and 86; also described in original certificate of sheriff's sale, by Joseph B. Scott, sheriff of Pima County, Arizona, dated June 16th, 1894, and recorded in Miscellaneous Records of said county, in Book 5, pages 270 et seq.; also described in deed of L. M. Jacobs to me dated December 4th, 1894, and recorded in real estate records of said county, in Book 26, pages 765 et seq. to all of which reference is here made for further description."

Defendants Bouldin Exhibit 6.

Defendants Bouldin then offered in evidence a deed from Daisy Belle Bouldin and James E. Bouldin to D. B. Gracey dated the 16th day of April, 1900, acknowledged on the same day and recorded

on June 26, 1907. Santa Cruz Development Company and defendants Wise objected to the introduction of said paper on the ground that the same does not cover the property in controversy. Said objection was overruled, to which ruling of the Court said defendants then and there duly excepted. [381]

The description in said deed reads as follows:

"An undivided one-half interest in all that piece, parcel or tract of land described as follows: Beginning at a point 6 miles, 18 chains and 22 links north of a point three miles west by south from the building known as the Hacienda de Santa Rita, running thence north 6 miles 18 chains and 22 links; thence east 12 miles, 36 chains and 44 links; thence south 6 miles, 18 chains and 22 links; thence west twelve miles, 36 chains and 44 links to the place of beginning and being the northern half of the tract known as location No. 3 of the Baca series being the same land described in deed by P. W. Bouldin to Dr. M. A. Taylor, dated November 7, 1894, recorded in Real Estate Records of said county, (Pima, Arizona) Book 26, pages 754 and 755—Also described in deed of James E. Bouldin to Dr. M. A. Taylor dated April 25, 1895, and recorded in deed records of real estate in the County aforesaid, in Book 27, pages 75 and 76, also described in original certificate of Sheriff's sale by Joseph B. Scott, Sheriff of Pima County, Arizona, dated June 16, 1894, and recorded in Miscellaneous Records of said County in Book 5, pages 270 et seq. also described in deed of

M. L. Jacobs dated December 4, 1894, and recorded in Real Estate Records of said County (Pima) in Book 26, page 765 et seq., to all of which reference is here made for further particulars."

Defendants Bouldin Exhibit 7.

Defendants Bouldin then offered in evidence a deed from D. B. Gracey to James E. Bouldin, dated the 15th day of June, 1907, acknowledged on the same day and recorded on June 26th, 1907. Santa Cruz Development Company and defendant Wise objected on the ground that it does not cover the property in question. Said objection was overruled by the Court to which [382] ruling of the Court said defendants then and there duly excepted.

The description in said deed reads as follows:

"all that certain undivided one-half interest in and to all that piece, parcel or tract of land described as follows, to wit, in Pima County, Arizona, in Santa Rita Mountains beginning at a point 6 miles, 18 chains and 22 links north of a point three miles west by south from the building known as the Hacienda de Santa Rita; running thence north 6 miles, 18 chains and 22 links; thence east 12 miles, 36 chains and 44 links; thence south 6 miles, 18 chains and 22 links; thence west 12 miles, 36 chains and 44 links to the place of beginning and being the northern half of the tract known as Location No. 3 of the Baca series being the same land described in deed by P. W. Bouldin to Dr. M. A. Taylor dated Nov. 7,-1894,-and described in real

estate records of said County (Pima), Arizona, Book 26, pages 754 and 755; also described in deed of James E. Bouldin to Dr. M. A. Taylor dated April 25, 1895, and recorded in real estate records of deed of real estate in the county aforesaid in Book 27, pages 75 and 76, also described in Original Certificates of Sheriff's sale by Joseph B. Scott, Sheriff of Pima County, Arizona, dated June 16, 1894, and recorded in Miscellaneous Records of said County, in Book 5, pages 270 et seq.; also described in deed of M. L. Jacobs to Dr. M. A. Taylor, dated Dec. 4, 1894, and recorded in Real Estate Records of said Pima County in Book 26, pages 765 et seq., to all of which reference is here made for further particulars." [383]

Defendants Bouldin Exhibit 8.

Defendants Bouldin offered in evidence a deed dated and acknowledged the 24th day of June, 1913, and recorded July 7, 1913, by James E. Bouldin to Jennie N. Bouldin, purporting to convey the undivided one-half of the north one-half of Baca Float No. 3 by the metes and bounds of the Location of 1863.

Mr. WELDON M. BAILEY.—Mr. Brevillier, you and the plaintiffs stipulated that whatever interest went from John C. Robinson to P. W. and James E. Bouldin in 1892 is now vested one-half in Jennie N. and one-half in the heirs of Daisy Belle Bouldin.

Mr. FRANKLIN.—Your Honor, I wish the record to show that the defendant Joseph E. Wise did

not make any such stipulation. I did not sign any such stipulation.

The COURT.—Very well, the record will show that.

Mr. WELDON M. BAILEY.—We rest. [384]

Plaintiffs' Exhibit "FF."

Plaintiffs then offered in evidence a power of attorney from James E. Bouldin, Jr., to David W. Bouldin, dated November 11, 1891, and recorded at the request of D. W. Bouldin, August 24, 1892, authorizing said David W. Bouldin to convey or do anything that he deems proper with reference to the interest of James E. Bouldin in Baca Float No. 3.

Plaintiffs' Exhibit "GG."

Plaintiffs offered in evidence power of attorney from Powhatan W. Bouldin and Lucy Bouldin, his wife, to D. W. Bouldin, dated October 3, 1890, and recorded at the request of D. W. Bouldin August 24, 1892, to the same purport as Plaintiffs' Exhibit "F."

Thereupon plaintiffs moved the Court to strike out Mr. Joseph E. Wise testimony as to possession and adverse possession.

Mr. FRANKLIN.—I object to the motion to strike on the ground that we consider the evidence relevant to the question of adverse possession.

Mr. NOBLE.—The motion is based, of course, upon the ground that his claim of adverse possession cannot be maintained here, because this land in question was not segregated from the public domain until between December 2, 1914, and December 14, 1914. Therefore there could be no possession or adverse

possession; it being a part of the public domain up to that time.

The COURT.—I sustain the objection to that testimony and order the evidence as to possession of Mr. Wise stricken out. [385]

To this ruling of the Court counsel for Joseph E. Wise and Lucia J. Wise then and there duly excepted, and asked that the testimony be considered as taken under the Equity Rule 46.

The COURT.—It may be so considered.

Thereupon counsel for plaintiffs moved the Court for a decree *pro confesso* against W. G. Rifenburg, and asked the Court to take notice of proof of service by publication upon him as filed in the clerk's office. The Court then ordered that such decree *pro confesso* be taken against the defendant W. G. Rifenburg.

Counsel for defendants Bouldin and counsel for Santa Cruz Development Company and counsel for defendants Wise joined in the request for the order for a judgment by default against said Rifenburg, and their several requests were allowed.

Minute Entry of April 1, 1915.

All parties being in court and having rested the following minute entry was made by the Court: "By agreement of all parties hereto, it is ordered that the defendants Joseph E. Wise and Lucia J. Wise shall have twenty days from this date within which to file herein their brief upon the question as to whether Antonio Baca is one of the children and heirs of Luis Maria Cabeza de Baca, and that the plaintiffs and other defendants herein may have twenty days

from the expiration of the time given to the defendants Joseph E. Wise and Lucia J. Wise within which to file their briefs in reply thereto, and that the case be taken under advisement by this Court.

Subsequent Proceedings.

Thereafter and on the 12th day of August, 1915, the defendants Joseph E. Wise and Lucia J. Wise filed a motion in writing to set aside the order of submission of April 1, 1915, and for [386] an order permitting them to file as additional evidence in the case, and to be deemed and considered as evidence, said motion being as follows:

Motion to File [Additional Evidence].

Now come defendants Joseph E. Wise and Lucia J. Wise, and move the Court for an order permitting them to file, as additional evidence in this case, and to be deemed and considered as evidence in the record of this case, the following documentary evidence, to wit:

- (1) Certified copy of affidavit signed and sworn to by Prudencio C. de Baca, on November 10, 1879, filed in the District Court of the Second Judicial District of the Territory of New Mexico, in and for Bernallilo County, in the case of Jose L. Perea et al., vs. Louis Sulzbacher et al., and being a record of said court in said case; which said affidavit sets forth the names of all the children and descendants of Luis Maria Baca, and shows that Antonio Baca, also called Jose Antonio Baca, was a son of Luis Maria Baca; that said Antonio died, leaving one legitimate child, to wit, Juan Manuel Baca, that he died leaving two children, to wit, Jose Baca and Preciliana, who mar-

ried Antonio Mares.

(2) Certified copy of an affidavit signed and sworn to by Luis A. C. de Baca, on October 12, 1887, filed in the said District Court of New Mexico aforesaid, in the said case of Perea et al., vs. Sulzbacher et al.; and being also a record of said court in said case, which said affidavit also sets forth that said Antonio Baca was a son of Luis Maria Baca, which son left a son Juan Manuel, who dying left two children, to wit, Jose Baca and Preciliana, wife of Antonio Mares. [387]

And the said defendants aforesaid, further move the Court to set aside the order heretofore made, submitting said case, to the end that said case be reopened so that said two certified copies of affidavits aforesaid, may be offered in evidence by these defendants, and may be introduced and filed by them as evidence in this case, and for such other and further orders as may be necessary in the premises.

The said documentary evidence which said defendants herewith ask leave to file as evidence in said case, to wit, the said certified copy of the affidavit of Prudencio C. de Baca and of Luis A. C. de Baca, are herewith deposited with the clerk of this court for inspection of Court and counsel.

JOSEPH E. WISE and
LUCIA J. WISE,
By SELIM M. FRANKLIN,
Their Solicitor.

Filed August 12, A. D. 1915.

Proceedings of September 30, 1915.

Thereafter and on the 30th day of September, 1915,

the said motion came up for hearing before the Court, all the attorneys for all the parties to this action, except W. G. Rifenburg, whose default had theretofore been taken and entered, being present in court.

Counsel for Joseph E. Wise argued and submitted said motion and thereupon the Court denied said motion, to which ruling of the Court the defendants Joseph E. Wise and Lucia J. Wise, Jesse H. Wise and Margaret W. Wise, then and there duly excepted.

And on said day in open court and in the proceedings in said case, counsel for said Joseph E. Wise said: [388]

Now, your Honor, during the trial of the case Joseph E. Wise objected to the introduction in evidence of a deed; being the deed of May 1st, 1864, from certain Baca heirs to John S. Watts, being Plaintiffs' Exhibit "C." We objected to that deed on the ground that as to certain ones of the heirs of Baca it was not their deed, either that they had not signed it or for other reasons set forth at that time, and the record shows the ruling of the Court was—the instrument was received in evidence subject to the objections of the defendants Joseph E. Wise and Lucia J. Wise. Your Honor has never ruled upon that objection.

The COURT.—The objection will be overruled.

To which ruling of the Court defendants Joseph E. Wise, Lucia J. Wise and all the intervenors, by their counsel, and defendants Santa Cruz Development Company by its counsel, then and there duly excepted.

Thereupon the Court said to the attorneys for the other parties to said action then in court:

The COURT.—Do you gentlemen desire to raise any question at this time?

Mr. CAMPBELL, Counsel for the Bouldins.—If your Honor please, there was offered in evidence by Mr. Franklin on behalf of Joseph E. Wise and Lucia J. Wise a judgment-roll and certain court proceedings, a certified copy, I mean, which we objected to, and your Honor said that you would hear us on our objections in the argument. Then if I remember correctly there was a motion made to strike out, which was not ruled on by your Honor. Now those could only be material in the case in the event that the '64 and '71 deeds did not carry any title to Watts. Your Honor held that they did, and thereafter, you will remember, Mr. Franklin put in his whole case. But I should like to have the [389] record clear on that, that they are rejected because they would be entirely immaterial. The record stands this way, if the Court please: Mr. Franklin put in his case at his request prior to the time that your Honor gave close consideration to the conveyances of '64 and '71, so that he had offered this judgment and the foreclosure proceedings and the sale—all of the proceedings. We objected to it at that time upon many grounds, of defects in the proceedings leading up to the sale, and in the sale itself. Then after your Honor had ruled we moved that the entire matter be stricken from the record. Your Honor had never yet admitted them in evidence. You simply said we could make our formal objections and you would hear us in our argument.

Thereupon the Court sustained the objection of counsel for the defendants Bouldin to the introduction in evidence of the said judgment-roll and court proceedings (being Defendants Wise Exhibit 19). To which ruling of the Court the defendants Joseph E. Wise, Lucia J. Wise, Jesse H. Wise, Margaret W. Wise and the Intervenors, by their counsel, then and there duly excepted.

The COURT.—Are there any other objections to be ruled on?

Mr. KINGAN.—I want to call the Court's attention to an objection made to the admission in evidence of the will of Luis Maria Cabeza de Baca. When that paper was offered in evidence it was objected to by Mr. Brevillier as being avowedly a copy of a copy and not certified. To his objection your Honor said he would receive it subject to the objection, and for further consideration as I remember. The point, therefore, has never been ruled upon. At this time, therefore, at the instance of Mr. Bernard who represents the Santa Cruz Development Company, [390] we ask your Honor to rule on the objection made to the introduction in evidence of the so-called will.

Mr. FRANKLIN.—Now, I want to say this, your Honor. They never objected to this simply on the ground that, being a copy, it was not the best evidence.

Mr. KINGAN.—We said it was incompetent.

Mr. FRANKLIN.—Incompetent, but not on that ground. They specify no ground except it was incompetent, irrelevant and immaterial. It was

allowed to go in subject to their objection, and the Court said it did not see how it was immaterial; intimating that if it was material it would be sufficient.

The COURT.—I remember ruling—stating at that time or during the trial sometime, that either party would be permitted within a reasonable time to obtain certified copies of any instrument which was not certified to for the purpose of being offered in evidence.

The COURT.—I will permit you to obtain a certified copy. Under the facts in this case and under the statement that I made it seems to me that it would be right and proper to permit you to obtain and file a certified copy for the reason that I stated that that would be allowed either counsel in the case, either party.

The Court then said: I cannot understand how I happened to admit that, even subject to the objection; being a copy of a copy, and having been made by the witness himself. He cannot prove any record. I certainly must not have full understood, unless I proceeded with the idea that the certified copy would be obtained and filed, as I told counsel at the conclusion of the case they would be permitted to do. I think in view of all that was said in that discussion that counsel should be allowed to [391] procure and file a certified copy, and I shall permit him to do so. In that connection if counsel for the defendant desire to introduce any testimony on that subject, I shall reopen the case for the purpose of allowing them to do it.

Mr. CAMPBELL.—That is the legitimacy of the—

Mr. KINGAN.—We do.

The COURT.—And in connection with that, if counsel for the plaintiffs and the Bouldins desire to introduce any testimony, I will permit them to do so.

Mr. KINGAN.—We do, your Honor.

Mr. CAMPBELL.—Now, then, in order to keep our record straight we object to the application of Mr. Franklin to reopen the case to furnish this certified copy, upon the ground it is too late and that there is nothing in the record that accounts for the original of this will, that it is lost and may not be had. I understand your Honor gives him thirty days?

The COURT.—Yes.

Mr. CAMPBELL.—We except.

Mr. KINGAN.—Now, if the Court please, the Santa Cruz Development Company objects to the re-opening of the case so as to permit the defendants Wise to produce additional evidence, in that the said Wises rested their case and did not at any time request the Court, during the trial or afterwards up until this day, to offer or produce any additional evidence; that no showing has been made for the re-opening of the case, and that on the record they are not entitled to have the case reopened and produce additional evidence.

The plaintiffs join in that objection and exception to the ruling of the Court, and ask permission of the Court to have their exception regarded as made in full. [392]

The COURT.—It may be so regarded.

Mr. CAMPBELL.—The Bouldin defendants will join in the particular objection made by the Santa Cruz Development Company and ask the same exception.

The COURT.—The same exception may be taken.

Thereafter and on the 1st day of November, 1915, the opening day of the November term, the said cause again came up for hearing before the Court, counsel for all the parties being present in open court, except the defendant Rifenburg, whose default had theretofore been duly entered, and thereupon counsel for Joseph E. Wise moved the Court, under the leave heretofore granted by the Court, to offer in evidence and to file a duly certified copy of the original will of Luis Maria Cabeza de Baca, with petition of the executor and order of the Governor thereon, the original being on file in the office of the Surveyor General of New Mexico, to which is annexed a translation, the said certified copy having been filed with the clerk within the thirty days allowed by the Court.

Thereupon Mr. Kingan, counsel for plaintiffs, objected to the introduction in evidence of the said document on the ground that it is irrelevant, immaterial and incompetent, and does not tend to prove any of the issues in this case in this: That the alleged will and petition show that Luis Maria Baca had a deceased son, but does not show that said son was Antonio; that it appears that said son, whatever his name may have been, had received advances and was not entitled to inherit, and consequently was not one of the heirs of Luis Maria Baca within the meaning of the granting statute, nor were his wife or children,

if there were any children; that the question of the right to inherit under the [393] document offered in evidence was referred to in the courts, and it does not appear that the adjudication upon the right to inherit was in favor of the heirs of this alleged son, even if he were Antonio; that the sixth section of the Act of Congress of June 21, 1860, declares that it shall be lawful for the heirs of Luis Maria Baca who make claim to the Las Vegas Grant to select certain lands, of which the land in question here, Baca Float No. 3 is a part; and that the heirs of the alleged Antonio, the grantors of the defendants Joseph E. and Margaret W. Wise, did not make claim to said land, or present any claim for same.

In which objection the Santa Cruz Development Company and the defendants Bouldin joined.

The objection of said counsel was overruled and the said duly certified copy of said petition, will and order thereon, was allowed to be filed and introduced in evidence, to which ruling of the Court, plaintiffs, defendant Santa Cruz Development Company and the defendants Bouldin, by their respective counsel, then and there duly excepted. Said instrument was marked "Defendants Wise Exhibit 39," and the original, in Spanish, and the translation thereof, are in words and figures following, to wit: [394]

Defendants Wise Exhibit 39.

Said instrument was marked "Defendants Wise Exhibit 39," and the original, in Spanish, and the translation thereof, are in words and figures (the nature of the case requiring that they be printed in full):

SELLO QUARTO.

Balga por los anos de 1827 y 1828. (Rubric).

Sor Gefe Politico.

El C. Migl Vaca Vecº de la Cienega Jurisdon de Sta Fee, ante Ve con el respecto Devido paresco y digo: Que estando mi finado hermº Luis Ma Baca en los ultimos periodos de su vida, deceoso de morir cristianamente y ne haver autoridad en aquel momento que autorisara su ultima voluntad lo qe solicito con grandes ansias, como consta por oficio qe para en ni poder, y por las graves circumstancias en qe se hallaba me confirio poder bastante ante testigos es toda providad para qe vajo de responsabilidad ante Dios y los homas instruyera su disposicion testamentaria segun los reservados me comunico cuyo documto humildemente acompano.

Y como quiera qe asepte este escrupuloso encargo, me veo estrechade adarles su devido cumplimiento el qe los heraderos unamimes y conformes han adaptado sin necesidad de recursos ni esperar a qe constara por escrito conformandose con lo que practicara aserca del reparte de bienes y demas desposiciones; en cuyo supuesto he precedido con la mayor sinceridad y conformidad de partes. Mas como en este ha querido formar [395] question Franca Garviso muger de fue de un hijo de mi finado hermº de querer entrar en parte con igualdad a les demas herederor, y estando yo bien instruido por mi finado hermano, y haci mismo constar por lists entre las dependencias el cargo que resulta contra el citado hijo de mi finado hermano, de estar satisfecha de su patrimonio paterno y materno con crecida ventaja

a los demas fuera del espresado cargo; yo como debe cumplir forsomamte su voluntad y disposicion de mi poder dante me he resistido a esta gestion qe ha dado lugar a comparecer ante el Alce a qn no le manifeste de palagra la facultad con qe ebraba como poder abiente cuyo instrumte por falta del requisite de su autorisacion quiere anular, quando el mismo documto manifiesta la necesidad qe en el acte de su instruccion hubo para dhā falta, a mas qe el auesilio qe a todo hombre le queda en seme jantes lances o incidentes son los testigos antes quienes profiere clara y distintamente su disposicion ques la miema necesidad autorisa V. g. como los que mueren en el campo & por lo qe las layes dan por bastante estas causas.

En tal concept y en obio de disturbios qe se pueden originar por el imprudente juicio del citado Alcalde.

A. Vs. Supco se sirva decretar ne se perturbe el buen orden y se deje libertad pa proceder religiosamente segun el encargo se me haconfierido, y quedar complida la ultima voluntad del etorgante a esto se contrahe mi solicitud y de ella espero la justicia qe impotre.

Albuquerque, Sept. 12 de 1827.

JOSE MIGUEL BACA (Rubric) [396]

SELLO CUARTO.

Valga por el Sello 3° para los Anos de 1827 y 1828.

Por al presente concedo todo mi poder y facultad quante por derecho se requiero y necessario fuese al ciudadano Miguel Baca mi hermano para que representando mi propia persona (despusa de mi muerte), derechos i axines pueda otorgar mi testamento y sea tan valedero somo si yo mismo lo hiciera cuyo poder

le transfieropor ayarme en los ultimos yastantes de mi vida de una erida que repen repentinamento e recibido y siendo mi voluntad morir como cristiano le encargo a mi dho poder dante ovre arreglado a su conciensia por el amor de Dios con todo dominio sin que por falta de requisito clausa o termino dejé de ser valedero este mi poder que con toda mi voluntad le trasfiero como mi ultima disposicion testamentaria no siendo de ningun valor ninguna otra que aparesca y para que tenga toda la fuersa y valor necessario y avermo faltado en esta ocacion un juez lo autorise suplique al ciudadano Franco Serracino lo firmara por mi poniendo mi nonvre y apellido y de mi propia mano una cruz siendo testigos de estas voces Pablo Montel la y Agustin Jaramillo y el enuncido Sarracino.

Peña Blanca, May 27 de 1827.

LUIS MA CABEZA DE BACA. X

PABLO MONTOYA. X

FRANCO SARRACINO (Rubric).

AGUSTIN HARAMILLO (Rubric).

Acuerdo de lo que debo y me deben y de lo qe deben hacer los ejecutores de mi ultima voluntad. ASV.

Yt Do, deber un hermano de Olguin un nobio de tres
anos mando es pague.

Yd Un Macho y una ternera a D Fernando Canpa.

[397]

Yd Un potrio de dos anos a Miguel Olona.

Ys A Miguel Baca mi hijo una mula.

Yd a Juan Anto Mi hijo una baca y un mulate de la
nacensi nacensi.

Yd a da Franco Chaves 60 ps.

Yt de que lo qe a mi me deben todo costa por las listas
qe paran en mi poder mando se cobre.

Yt mando qe dejo a mi esposa y sus hijos del camino
reals hasta el rio y de la hera que esya delante
do la casa de Jose para abajo anta donde alcansa
mi lindero con la mita de mi casa.

Yt de Qe a Juan Anto mi hijo la tengo pagado cien
baras de tierra del eaucito para abajo.

Yt mande que la demas tierras delse conosen por misas
se reparta entre todos mis herederos pos yguqles
partes escepto to el sitio de Santa Cruz qe solo
queda abeneficio de los dos mayores por qe asi
me lo manda mi conciencia por ser estos los qe
trabajaron todo lo qe tengo.

Yt mando qe todas las listas y papeles se le entreguen
a mi apoderado para qe por ellas arregle mis
negocios.

Yt mando a mi apoderado qe si resultare dever al-
guna cosa justificade qe sea se pague. Ygual-
mente mando a mi muger a hijos bajo toda re-
sponsabilidad y pena de mi maldicion ne se sal-
gan un punto de lo qe a mi apoderado disponga
y haga ques como catolico christiano qe soyle
comunidad y sinquesto de todos mie asuntos
y a quien le encargo la conciencia con el e descar-
gado la mia para qe por virtud del anterior poder
haga todo lo qe ye podia aber echo en bida.

Yt mando por conclusion qe a mi esposa Ma Encar-
nacion [398] Lucero le den trecientas vs de
tiera de las qe heran de Jose Miguel Apodaca.

Yten. concluyo firmando en los terminos qe consta
por no tener mas tiempo y estar ya en los ultimos

yestantes de mi vida en la Pena Blanca hoy 28 de Mayo de 1827.

LUIS MARIA CABEZA de BACA,
PERSEGUIDO (Rubric).

Tgo.

PABLO MONTOYA.

Tgo.

AGUSTIN JARAMIO.

Albuquerque, 7bre 12 de 1827.

El Alcalde constl de Cochiti tendra por valido el poder que el finado Luis Ma Caveza de Baca dio a su hermano Du Migual y por lo qe respecta a los reclamos que haga franca garviso oira a ambas partes y dispondra arreglado a justicia, entondido que si en vida se le dio alguna cosa a su difunto esposo sora revajado de lo que por fin y muerte de su padre le corresponda.

ARMIJO (Rubric).

Department of the Interior,
Office of U. S. Surveyor General,
Santa Fe, N. M.

I, Lucius Dills, U. S. Surveyor General for the District of New Mexico, hereby certify that the foregoing typewritten pages, numbered from one to four inclusive, have been carefully compared and that they contain a true and correct copy of the original document now in the Archives in my office.

Witness my hand and official seal at my office in the city of Santa Fe on this the 6th day of October, A. D. 1915.

[Seal]

LUCIUS DILLS,
U. S. Surveyor General for New Mexico.

[Int. Rev. Stamp. 10¢.—Canceled.] [399]

FOURTH SEAL.

Legal for the years of 1827 and 1828.

Mr. Jefe Politico:

I, the C. Migl Vaca *Vaca* from Cienega Jurisdiction of Santa Fe, before you with due respect appears and says: That being in his last instants of his life my deceased brother Luis Ma Vaca and willing to die as a Christian and not being in that moment any authority to authorize his last will, that he has been anxiously requesting, as it appears from official letters in my position, and for critical conditions in which he was, he did confer to me a competent power before witnesses of all capacity to act under the responsibility before God and men to instruct his dispositions as per particulars which he did communicate to me which document I here enclose you.

And as I did accept this escrroupulous trust, I feel obliged to give right addomplishment to which all the heirs unanimously and in conformity have adopted without any other resources nor having to wait for a writing conforming themselves with all my acts in regard of the division of the property and with all dispositions; in this I have been proceeding with the best of my sincirety and with the conformity of all parties. But as in this matter, Franco Garviso, who was the wife of a son of my deceased brother has been willing to make trouble claiming an equal part with the other heirs and being I instructed by my deceased brother, and appearing for the lists in the business the charge to the referred son of my brother, he has been satisfied of all his patrimony fatherly and motherly with great advan-

tage to the others, out of the mentioned charge; as I have the duty to accomplish the will and disposition of my constituent I have rejected this claim, having been obliged to apply before the Alcalde to whom I did not expose by word the authority with which I have been acted as empowered, instrument which he for the lack of the requisite of his authorization is willing to annul, when the same document sets for the necessity for which such an act of its instruction had for the said fault, moreover that the resources that all men have in such cases or instances are the witness before whos declares and sets for clearly and distinctly his will that the said imperiosity authorices e. i. those who die out of the country and for whose the law sets for sufficient those causes.

By this concept and avoiding any disturbances that my happen by the imprudent judgment of the mentioned Alcalde.

I beg you to decret that the good order not be perturbed and that I be at liberty to proceed religiously according to the trust that have been conferred to me, and that the last will of the grantor be fulfilled, this is in essence my solicitud and I do wait the [400] proper justice.

Albuquerque Set. the 12th of 1827.

JOSE MIGUEL VACA (Rubric).

FOURTH SEAL.

Legal for the Thirth Seal for the years of 1827 and 1828.

By this I do grant all my power and authority that in right is required and were necessary to the citizen Miguel Vaca, my brother for the representation of

my person (after my dead) rights and actions he can execute my will and this to be as legal as if it were made by my own self this power I give to him being myself in the last moments of my life from a wound that I suddenly have received and willing to die as a christian I entrust to my said constituent to act according to his own conciency for the love of God and with all dominion without for lack or requisite clause or term fail to be valid this my power which with all my will grant as my last disposition, execution not being of any value any other who appears, and to, give all the necessary force and value and not having at hand in this occasion a judge for its authorization I did beg to citizen Franco Serracino to sign it for me setting my first and second names and by my own hand a cross being witness of this words, Pablo Montella y Agustin Jaramillo and the said Sarracino.

Pena Blanca May the 27th of 1827.

LUIS MA CABEZA DE BACA. X

PABLO MONTOYA. X

FRANCO SERRACINO (Rubric).

AGUSTIN JARAMILLO. (Rubric).

Agreement of my debits and credits and instructions of duties to the executors of my last will. ASV.
It. Due to a brother of Olguin one three years steer,
I order to be paid.

It. One he-mule and one heifer to D. Fernando Campa.

It. One two hears colt to Miguel Olona.

It. To Miguel Baca my son one mule.

It. To Juan Anto my son one cow and one young he-mule from the coming season.

- It. A. D. Franco Dhavez 60 ps.
- It. That of my credits all are included in lists which are in my possession, I order to be collected.
- It. I order that the legacy to my wife and her sons be, from the real road to the river and from the patch in front of Jese's house down to reach my border line to half of my residence.
- It. That I have already paid to my son Juan Anto one hundred varas of land from the Saucito down.

[401]

- It. I order that the balance of lands that are known as mine to be divided between all my heirs by equal parts, except the Santa Cruz place which will be to the benefit of the two elders because it so orders my conciency being those the ones who had been working all that I have.
- It. I order that all the lists and papers be turned order to my empowered to the conduction of my affairs.
- It. I order to my empowered that if it appears anything that I owe if it is just to be paid. I also order to my wife and sons under all responsibility and the penalty of my malediction do not to go out of the deeds and dispositions of my empowered a period, that as an christian and catholic that I am have instructed and communicate to him all my affairs and to whom I burden his conscience to discharge mine and by virtue of the former power he will act doing all which I could do in life.

It. I close in the terms set forth not having any more time for being in the, last moments of my life at Pena Blanca this the 28th day of May, 1827.

 LUIS MARIA CABEZA de BACA.
 PERSEGUIDO (Rubric).

Witness:

 PABLO MONTOYA.

Witness:

 AGUSTIN JARAMILLO.

Albuquerque, Set. 12th of 1827.

The constitutional Alcalde of Cochiti shall have as valid the power that the deceased Luis Maria Cabeza de Baca has conferred to his brother Dn. Miguel and with regard to the claims of Franca Garviso he shall hear both parties and pass judgment adjusted to justice, with the understanding that if something was given in life to his deceased husband it will be deducted of that which at last and for the dead of his father he should be entitled.

 ARMIJO (Rubric).

DEPARTMENT OF THE INTERIOR.

Office of U. S. Surveyor General,
Santa Fe, N. M.

I. Lucius Dills, U. S. Surveyor General for the District of New Mexico, hereby certify that the foregoing typewritten pages, numbered from one to four inclusive, have been carefully compared and that they contain a true and correct copy of the original document now in the Archives in my office.

Witness my hand and official seal at my office in

the city of Santa Fe, on this the 6th day of October,
A. D. 1915.

[Seal]

LUCIUS DILLS,

U. S. Surveyor General for New Mexico. [402]

Thereupon Mr. Franklin, counsel for Joseph E. Wise, offered in evidence a copy of a judgment rendered by the District Court of the Territory of New Mexico, in and for the County of Bernalillo, in the year 1900, in the case of Joseph L. Perea vs. Louis Sulzbacher et al.—being the case referred to during the trial of this case—wherein that Court found that Antonio Baca, or Jose Antonio Baca, as he is also called, was a son of Luis Maria Baca.

Plaintiffs, defendants Bouldin and Santa Cruz Development Company, objected to the introduction in evidence of said document for the reason and upon the ground that the Court opened the case for one purpose only—to permit counsel for Wise to file a certified copy of one paper which had been introduced in evidence and had not been properly certified.

Objection sustained, and the Court refused to permit counsel for Wise to file said certified copy of said judgment, to which ruling of the Court the defendant Joseph E. Wise then and there duly excepted.

Thereupon counsel for Joseph E. Wise asked the Court that the said certified copy of the decree which he offered, be taken under Rule 46, that is to say, taken up and put in the record. The Court declined to receive said instrument under Rule 46.

Thereupon counsel for Joseph E. Wise offered in

evidence a duly certified copy of the affidavit of Prudencio Baca, which heretofore he moved the Court to introduce, in his motion to set aside the submission of the case, heretofore referred to, being a duly certified copy of the affidavit of Prudencio Baca that was referred to during the trial of the case. [403]

Mr. CAMPBELL.—If the Court please, we renew all the objections we heretofore made to it, and on the further ground that it is incompetent and irrelevant.

The COURT.—Objection sustained.

Mr. FRANKLIN.—I will ask, then, that our exception be duly noted to the ruling of the Court, and I will ask that this be made a part of the record under Rule 46.

Mr. KINGAN.—Rule 46 has nothing to do with this.

The COURT.—I decline to make it a part of the record under Rule 46, because Rule 46 contemplates that such testimony as shall be offered in open court while the case is in progress and not admitted in evidence, may be taken under the rule; and it does not contemplate that after a case has been opened for one purpose only, that a party to the cause may then introduce any and all evidence in the case that they may so desire to introduce under the guise of offering it under Rule 46.

Thereupon counsel for Santa Cruz Development Company moved the Court, on the objections of the defendants Santa Cruz Development Company and Joseph E. Wise to the introduction in evidence of the Wrightson bond Plaintiffs' Exhibit "L," to

strike the same from evidence. The motion was denied and an exception taken.

Thereupon the Court rendered its judgment and decree as fully set forth in the decree on file and of record herein.

Thereupon the plaintiffs, the defendants Bouldin and the defendants Joseph E. Wise and Lucia J. Wise (the intervenors joining with said defendants Wise) in open court, at the time of the rendition of the decree presented their respective petitions for leave to appeal with assignments of error and undertaking on appeal. Said applications were forthwith allowed in open court and the undertakings approved.

[404]

Thereupon, in open court, at the same time and term of the rendition of the decree, Santa Cruz Development Company presented its petition for leave to appeal with its assignments of error. For proceedings thereon see order entered.

The defendants Jesse H. Wise and Margaret W. Wise, by their solicitor announced in open court at the time of the rendition of the decree, that they would not appeal. [405]

Appendix.

For the purposes of convenience Defendants Wise Exhibits 19, 20, 21, 22, 23 and 26, hereinbefore referred to are here inserted, being each respectively in words and figures following, to wit: [406]

Defendants Wise Exhibit 19.

*In the District Court of the First Judicial District
of the Territory of Arizona, in and for the
County of Pima.*

JOHN IRELAND and WILBUR H. KING,
Plaintiffs,
vs.

DAVID W. BOULDIN,
Defendant.

COMPLAINT.

Plaintiffs complain and allege:

I.

That said John Ireland is a resident of the town of Seguin, State of Texas; that said Wilbur H. King is a resident of Sulphur Springs, Hopkins County, in the said State; and that said David W. Bouldin is a resident of the city of Austin, Travis County, in said State:

II.

That on the 22d day of March, 1888, said defendant made and delivered to said plaintiffs for a valuable consideration his certain promissory note in words and figures as follows, to wit:

“Twelve months after date, for value received, I promise to pay John Ireland and Wilburn H. King, in lawful money of the United States, and at the First National Bank of and in the city of Austin, Travis County, Texas, the sum of five thousand (\$5000) Dollars, with interest from date at the rate of ten (10) per cent per annum.

This note is given and to be paid according to its legal tenor and effect, for an undivided interest of one-third of one-third in and to a certain tract of land in Pima County, in the Territory of Arizona, and more particularly described in a 'bond for title' to said undivided interest in said land, given me by said John Ireland and Wilburn H. King and bearing even date herewith; that is to say, March 22d, 1888.

In the event default is made in the payment of this note at maturity, and it is placed in the hands of an attorney for collection, or suit is brought on the same, then an additional [407] amount of ten (10) per cent on the principal and interest of this note shall be added to the same as collection fees.
Austin, Travis County, Texas.

March 22d, 1888.

D. W. BOULDIN.

III.

That said plaintiffs are now the owners and holders of said note and that no part of the said principal sum or interest has ever been paid, but that the whole thereof both principal and interest is now due and owing from said defendants to these plaintiffs.

IV.

That the said defendant David W. Bouldin is the same person who signed said note under the name of D. W. Bouldin and that said signature was meant and intended to be the signature of said David W. Bouldin, defendant as aforesaid.

V.

That the amount now due on said note for principal and interest is the sum of seven thousand four hundred and forty-five dollars and eighty three cents, and that the ten per cent provided in said note for counsel fees in case of suit amounts to the sum of seven hundred and forty-four dollars and fifty-eight cents.

WHEREFORE plaintiffs pray judgment in the sum of said principal sum of five thousand dollars together with interest thereon at the rate of ten per cent per annum from the date of said note, and for the further sum of seven hundred and forty-four dollars and fifty-eight cents as attorney's fees thereon; together with their costs of suit.

FRANCIS J. HENEY,
Attorney for Plaintiffs.

[Endorsed]: Filed March 13th, at 4:30 P. M.
1893. Brewster Cameron, Clerk. By Chas. Bowman, Deputy Clerk. [408]

*In the District Court of the First Judicial District of
the Territory of Arizona, in and for the County
of Pima.*

JOHN IRELAND and WILBURN H. KING,
Plaintiffs,
vs.
DAVID W. BOULDIN,

Summons.

Action brought in the District Court of the First Judicial District in and for the County of Pima, the Territory of Arizona.

The Territory of Arizona sends Greeting to David W. Bouldin.

You are hereby summoned and required to appear in an action brought against you by the above-named plaintiff in the District Court of the First Judicial District in and for the county of Pima, in the Territory of Arizona, and answer the complaint filed with the clerk of this court, at Tucson, in said county, within ten days (exclusive of the day of service) after the service upon you of this Summons, if served in this county; but if served out of the county and within this district, then within twenty days; in other cases thirty days.

And you are hereby notified that if you fail to appear and answer the complaint as above required, judgment by default will be taken against you.

GIVEN UNDER MY HAND and the Seal of said District Court at Tucson, this 13th day of March, A. D., 1893.

BREWSTER CAMERON,
Clerk.

By Chas. Bowman,
Deputy Clerk. [409]

Territory of Arizona,
County of Pima,—ss.

Paul Hermans being duly sworn, deposes and says that he is an employee of the Arizona Daily and

Weekly Star, a newspaper of general circulation, printed and published in the city of Tucson, County of Pima Arizona Territory; that the Summons of which the annexed is a copy, was published in the said Arizona Daily Star for the period of 30 days from the 15th day of March, 1893, to the 15th day of April, 1893, inclusive.

PAUL HERMANS.

Subscribed and sworn to before me this 18th day of April, A. D. 1893.

BREWSTER CAMERON,
Clerk,
Charles Bowman,
D. C.

Office of the Sheriff,
County of Pima,—ss.

I hereby certify that I received the within summons at 10 o'clock A. M., on the 14th day of March, A. D., 1893, and served the same on the 15th day of March, A. D., 1893, on David W. Bouldin, being the defendant named in the summons, by publishing it in the Daily Star, a newspaper published daily in the city of Tucson, Pima County, Arizona Territory, for the period of thirty days, commencing on the 15th day of March, the affidavit of publication and a copy of said publication are hereto attached.

J. B. SCOTT.
By F. L. Proctor,
Under-Sheriff.

[Endorsed]: Filed April 22, 1893. Brewster Cameron, Clerk. By S. Ainsa, Deputy Clerk. [410]

*In the District Court of the First Judicial District of
the Territory of Arizona in and for the County
of Pima.*

JOHN IRELAND and WILBURN H. KING,
Plaintiffs,
vs.

DAVID W. BOULDIN,
Defendants.

Territory of Arizona,
County of Pima,—ss.

Francis J. Heney being duly sworn deposes and says that he is the attorney for plaintiffs in the above-entitled action; that the defendant is a non-resident of said Territory of Arizona and resides at the city of Austin, Travis County, State of Texas.

FRANCIS J. HENEY,

Subscribed and sworn to before me this 13th day of March, 1893.

[Seal]

B. W. TICHENOSE,
Notary Public,
Pima Co., Ariz.

[Endorsed]: Filed March 13, 1893, Brewster Cameron, Clerk. By Chas. Bowman, Deputy Clerk.

[411]

*In the District Court of the First Judicial District
of the Territory of Arizona in and for the
County of Pima.*

JOHN IRELAND and WILBURN H. KING,
Plaintiffs,

vs.

DAVID W. BOULDIN,
Defendant.

Affidavit on Attachment.

Francis J. Heney being first duly sworn, deposes and says: That he is the attorney for the plaintiffs in the above-entitled action. That the above-named defendant in said action is indebted to John Ireland and Wilburn H. King in the sum of eight thousand, one hundred and ninety and 41/100 dollars over and above all legal setoffs or counterclaims upon an expressed written contract for direct payment of money, to wit: Upon his promissory note for the sum of five thousand dollars dated March 22d, 1888, bearing interest at ten per cent per annum and providing for the payment of ten per cent on both principal and interest, for attorney's fees in case of suit; and that such contract is payable in this Territory; and that said defendant does not reside in the Territory of Arizona.

That the sum for which the attachment is asked is a *bona fide* existing debt, due and owing from the defendant to the plaintiffs; and that the attachment is not sought for wrongful or malicious purpose and the action is not prosecuted to hinder, delay or de-

fraud any creditor or creditors of the defendant.

FRANCIS J. HENEY.

Dated _____ 1893.

Subscribed and sworn to before me this 13th day
of March, 1893.

[Seal] B. W. TICHENOSE,
Notary Public, Pima Co., Ariz.

[Endorsed]: Filed March 13, 1893, Brewster
Cameron, Clerk, By _____. [412]

*In the District Court of the First Judicial District
of the Territory of Arizona, in and for the
County of Pima.*

JOHN IRELAND and WILBURN H. KING,
Plaintiffs,

vs.

DAVID W. BOULDIN,
Defendant.

Bond on Attachment.

Territory of Arizona,
County of Pima,—ss.

We, the undersigned, John Ireland and Wilburn H. King as principals, and Benj. Heney and John Gardiner as sureties, acknowledge ourselves bound to pay to David W. Bouldin the sum of sixteen thousand four hundred dollars, conditioned that the above-bound John Ireland and Wilburn H. King plaintiffs in attachment against the said David W. Bouldin defendant, will prosecute his said suit to effect, and that he will pay all such damages and costs as shall be adjudged against him for wrong-

fully suing out such attachment.

WITNESS our hands this 23 day of February
A. D., 1893.

WILBURN H. KING,
JOHN IRELAND,
BENJ. HENEY.
JOHN GARDINER.

Approved:

BREWSTER CAMERON,

Clerk.

Chas. Bowman,

D. C.

[Endorsed]: Filed Mch. 13, 1893. Brewster Cameron, Clerk. By Chas. Bowman, Deputy Clerk.

[413]

Sheriff's Office,
Pima County, A. T.

By virtue of the annexed writ I duly attached the following described property belonging to the defendant, to wit:

Location number three (3) being one of five tracts of land, selected and located by virtue of and in accordance with the provisions of the sixth section of an act of Congress of the United States approved June 21st, 1860, entitled an act to confirm certain private land claims in New Mexico, and found in volume twelve (12) page 72 of the United Statutes at Large, for further and better description of the above-described property see No. 14 page 597 and following pages, Deeds of Real Estate in the Recorder's Office at Tucson, County of Pima, Arizona Territory.

The above-described property was attached on the

14th day of March, 1893, at 4 P. M., no personal property being attached.

J. B. SCOTT,
Sheriff,
F. L. Proctor,
Under-sheriff. [414]

*District Court of the First Judicial District of the
Territory of Arizona, in and for the County of
Pima.*

JOHN IRELAND and WILBURN H. KING,
Plaintiffs,

vs.

DAVID W. BOULDIN,
Defendant.

Writ of Attachment.

The Territory of Arizona to the Sheriff or any Constable of the said County of Pima, Greeting:

WE COMMAND that you attach forthwith so much of the property of David W. Bouldin, if to be found in your county, repleviable, on security, as shall be of value sufficient to make the sum of \$5000 Dollars, with interest at the rate of 10% per annum from March 22d, 1888, until date, and the probable costs of suit, to satisfy the demand of John Ireland and Wilburn H. King, and that you keep secure in your hands the property so attached, unless replevied, that the same may be liable to further proceedings thereon, to be had before the Court, and that you make return of this writ showing how you have executed the same.

WITNESS, Hon. R. E. SLOAN, Judge of said District Court, at the Courthouse in the said County of Pima, this 13th day of March, 1893.

ATTEST my hand and the seal of said court, the day and year last above written.

BREWSTER CAMERON,
Clerk,
By Charles Bowman,
Deputy Clerk.

[Endorsed]: Filed April 22, 1893, Brewster Cameron, Clerk. By S. Ainsa, Dep. Clk. [415]

*In the District Court of the First Judicial District
of the Territory of Arizona, in and for the
County of Pima.*

JOHN IRELAND and WILBUR H. KING,
Plaintiffs,
vs.
DAVID W. BOULDIN,
Defendant.

Now comes the defendant and demurs to plaintiffs' complaint herein on the grounds that the same does not state facts sufficient to constitute a cause of action.

SELIM M. FRANKLIN,
Attorney for defendant.

And in answer to the said complaint defendant denies each and every allegation therein; and defendant further denies that there was any valuable consideration or any consideration whatsoever paid unto him by plaintiffs, or either of them, or at all

for the execution or delivery of the promissory note mentioned and described in plaintiffs' complaint.

And for a further answer, defendant avers that on the 22d day of March, 1888, in the State of Texas, the said plaintiffs did agree to grant, bargain, sell and convey unto this defendant by a good and sufficient deed an undivided one-ninth interest of a certain tract of land, situate in the county of Pima, in the Territory of Arizona, and commonly known and called the "Baca Float No. 3," and that in consideration of said deed so to be made, executed and delivered by plaintiffs unto defendant, this defendant did execute and deliver unto plaintiffs the promissory note mentioned and described in plaintiffs' complaint herein; that said plaintiffs and both of them did fail and refuse to execute and deliver unto defendant a good and sufficient deed, conveying unto him the said undivided one-ninth interest in and to the property [416] aforesaid; and defendant further avers that said plaintiffs had no title whatever or interest in the said property agreed to be conveyed by them, and that they could not make any title thereto or to the undivided one-ninth interest which they agreed to convey, and therefore that the consideration of said promissory note has entirely and utterly failed and that said promissory note was given without any consideration whatsoever.

WHEREFORE, defendant prays judgment that plaintiffs take nothing by this action and defendant be hence dismissed with his costs.

SELIM M. FRANKLIN,
Attorney for defendant.

[Endorsed]: Filed May 10, 1893, Brewster Cameron, Clerk. By Chas. Bowman, Deputy Clerk.
[417]

*In the District Court of the First Judicial District
of the Territory of Arizona, in and for the
County of Pima.*

JOHN IRELAND and WILBUR H. KING,
vs.

DAVID W. BOULDIN.

This cause came on regularly for trial on the 2d day of May, 1895, Francis J. Heney, appearing as counsel for plaintiffs and Leo Goldschmidt, administrator of the estate of David W. Bouldin, deceased, appearing in his own proper person as the defendant in said cause by reason of the death of said David W. Bouldin having been suggested to the Court and said Leo Goldschmidt as such administrator having been substituted as defendant in said cause by order of the above-entitled court. A trial by jury having been expressly waived by the respective parties, the cause was tried before the Court sitting without a jury, and witnesses were duly sworn and examined and evidence was introduced, and it having been clearly proven that the claim sued upon had been duly and properly filed with said administrator, Leo Goldschmidt, after he had duly qualified as such administrator and during the pendency of this action, and it further appearing that he had rejected the same, the cause was submitted to the Court for consideration and

decision; and after due deliberation thereon the Court finds all the issues for the plaintiffs.

Wherefore it is ordered, decreed and adjudged that John Ireland and Wilbur H. King, the plaintiffs, do have and recover from Leo Goldschmidt, as administrator of David W. Bouldin, deceased, the sum of eight thousand, five hundred and fifty dollars, with interest thereon at the rate of ten per cent per annum from the date hereof until paid, together with plaintiffs costs and disbursements incurred in this action, amounting to the sum of \$34.45, and that said amount be paid by said Leo Goldschmidt, administrator, in the due course of the administration of the estate of David W. Bouldin, deceased.

And it further appearing to the Court that a writ of attachment heretofore duly issued in this cause was on the 14th day of March, 1893, duly levied upon all of the right, title and interest of David W. Bouldin in and to the following described real estate, lying, being and situate in the county of Pima, Territory of Arizona, to wit, Location No. three (3), being one of five tracts of land selected and located by virtue of and in accordance with the provisions of the sixth section of an act of Congress of the United States approved June 21, 1860, entitled "An Act to confirm certain private land claims in New Mexico," and found in volume 12, page 72 of the United States Statutes at Large, said location being described as follows: Situated in the Territory of Arizona, formerly Dona Ana County, New Mexico, beginning at a point one mile and a half from [418]

the Salero Mountain in a direction north forty-five degrees east of the highest point of said mountain running thence from said beginning point west twelve miles thirty-six chains and forty-four links, thence south twelve miles, thirty-six chains and thirty-four links; thence east twelve miles, thirty-six chains and thirty-four links; thence north twelve miles, thirty-six chains and thirty-four links to the place of beginning, and containing ninety-nine thousand two hundred and eighty-nine acres, and thirty-nine hundredths of an acre more or less.

And it further appearing to the Court that said attachment lien should be foreclosed, and that all of said property, or a sufficiency thereof, should be sold to satisfy said judgment;

Now, therefore, it is ordered, decreed and adjudged that the said attachment lien as the same existed on the 14th day of March, 1893, be and the same is hereby foreclosed, and that an order of sale be issued by the clerk of this Court, under the seal of this Court, directed to the sheriff of the county of Pima, Territory of Arizona, directing him to seize and sell as under execution, for the purpose of foreclosing the said attachment lien, the right, title and interest of said David W. Bouldin in the above-described property, as the same existed on the 14th day of March, 1893, or so much thereof as will be necessary to satisfy the said judgment with costs and costs of said sale.

J. V. BETHUNE,
Judge.

Done in open court this 2d day of May, 1895.

Territory of Arizona,
County of Pima,—ss.

I, Andrew J. Halbert, Clerk of the District Court, in and for Pima County, Territory of Arizona, do hereby certify that the foregoing is a full, true and correct judgment-roll in the case entitled John Ireland et al., vs. David W. Bouldin, as appears to us of record.

ATTEST my hand and seal of court, this 2d day of May, A. D., 1895.

ANDREW J. HALBERT,
Clerk.

By W. P. B. Field,
Deputy. [419]

[Endorsed]: Filed May 2d, 1895. Andrew J. Halbert, Clerk. M. P. B. Field, Deputy Clerk.

*In the District Court of the First Judicial District of
the Territory of Arizona, in and for the County
of Pima.*

JOHN IRELAND and WILBUR H. KING,
Plaintiffs,
vs.
DAVID W. BOULDIN,
Defendant.

Memorandum of Costs and Disbursements.

DISBURSEMENTS.

Sheriff's fees.....	\$19.70
Clerk's fees.....	14.75
Total.....	34.45

Territory of Arizona,

County of Pima,—ss.

Francis J. Heney, being duly sworn deposes and says: That he is the attorney for the plaintiffs in the above-entitled action, and as such, is better informed, relative to the above costs and disbursements therein, than the said John Ireland and Wilbur H. King. That the items in the above-memorandum contained are correct, and that the said disbursements have been necessarily incurred in the said action.

FRANCIS J. HENEY,

Subscribed and sworn to before me this 3d day of May, A. D. 1895.

A. J. HALBERT,
Clerk.

[Endorsed]: Filed May 3rd, 1895. A. J. Halbert,
Clerk. [420]

Office of the Sheriff,
County of Pima,—ss.

I hereby certify that I received the annexed Order of Sale at 5:30 P. M. on the 3d day of July, 1895. And under and by virtue of said order of sale, I did, on the 5th day of July, 1895, levy upon all of the right title, claim and interest of the within-named

defendant, Leo Goldschmidt, administrator of the estate of David W. Bouldin, deceased, in and to the following described real property, lying, being and situate in the county of Pima, Arizona Territory, to wit; Location number three (3) being one of five tracts of land selected and located by virtue of and in accordance with the provisions of the sixth section of an act of Congress of the United States approved June 21st, 1860, entitled "An Act to confirm certain private land claims in New Mexico," and found in volume twelve, page 72 of the United States Statutes at Large, said Location being described as follows: Situated in the Territory of Arizona, formerly Dona Ana County, New Mexico, beginning at a point one mile and a half from the Salero Mountain in a direction North forty-five degrees east of the highest point of said mountain running thence from said beginning point west twelve miles, thirty-six chains and thirty-four links; thence south twelve miles, thirty-six chains and thirty-four links, thence east twelve miles, thirty-six chains and thirty-four links, thence east twelve miles, thirty-six chains and thirty-four links, thence north twelve miles, thirty-six chains and thirty-four links to the place of beginning, and containing ninety-nine thousand two hundred and eighty-nine acres and thirty-nine hundredths of an acre, more or less.

And I further certify that under and by virtue of said Order of Sale, I did advertise said real property for sale, by posting notices of said sale in three public places, one of which was at the courthouse door and also by advertising in the "Citizen" a daily

newspaper of general circulation published in the city of Tucson, Pima County, Arizona Territory, a copy of which is hereto attached, from the 8th day of July, 1895, until the 31st day of July, 1895, daily and successively. And I further certify that I did attend at the hour, time and place advertised for said sale and offered for sale a part of said property for sale and received no bid. I then offered two parts of said property for sale and received no bid. I then offered three parts of said property for sale and received no bid, then I offered the whole of said property for sale, and received a bid of two thousand dollars (\$2000); that being the highest and best bid offered in lawful money of the United States, the said property was sold to Wilbur H. King.

R. N. LEATHERWOOD,
Sheriff,
By W. H. Taylor,
D. S.

NOTICE OF SHERIFF'S SALE.

JOHN IRELAND and WILBUR H. KING,
Plaintiffs,
vs.

LEO GOLDSCHMIDT, Administrator of the Estate
of David W. Bouldin, Deceased. [421]

Under and by virtue of an execution and order of sale issued out of the District Court of the First Judicial District of the Territory of Arizona, in and for the county of Pima, on the 3d day of July, A. D. 1895, and to me as sheriff duly directed and deliv-

ered, on a judgment rendered in said court, in the above-entitled action, on the 2d day of May, A. D., 1895, for the sum of eight thousand five hundred and eighty-four dollars and forty-five cents (8584.45) with interest thereon at the rate of ten per cent per annum, until paid, together with the foreclosure of plaintiffs' attachment lien upon the following described property in Pima County, Territory of Arizona, upon which I have duly seized and levied, and in said order of sale described as Location Number Three, being one of five tracts of land selected and located by virtue of and in accordance with the provisions of the 6th section of an act of Congress of the United States, approved June 21st, 1860, entitled "An Act to confirm certain Private Land Claims in New Mexico," and found in volume twelve, page 72 of the United States Statutes at Large, said location being described as follows: Situated in the Territory of Arizona, formerly Dona Ana County, New Mexico, beginning at a point one mile and one-half from the Salero Mountain in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles, thirty-six chains and thirty-four links, thence south twelve miles, thirty-six chains and thirty-four links; thence east twelve miles, thirty-six chains and thirty-four links; thence north twelve miles, thirty-six chains and thirty-four links to the place of beginning; and containing ninety-nine thousand, two hundred and eighty-nine acres and 39-100 of an acre, more or less; as said attachment lien existed on the 14th day of March, A. D., 1893.

Public notice is hereby given that I will at the courthouse door of the said county of Pima, at the hour of ten o'clock A. M. on Wednesday, the 31st day of July, A. D., 1895, sell at public auction to the highest and best bidder for cash, in lawful money of the United States, all the right, title, claim and interest both legal and equitable of the above-named defendant, in, of and to the above-described property and all the right, title and interest, both legal and equitable which said David W. Bouldin, deceased, had at the time of his death, in, of and to the above-described property, or so much of said property as may be necessary to satisfy said judgment and costs of suit and all accruing costs.

R. N. LEATHERWOOD,
Sheriff.

Dated July 8, 1895. [422]

*In the District Court of the First Judicial District of
the Territory of Arizona, in and for the County
of Pima.*

JOHN IRELAND and WILBUR H. KING,
vs.

DAVID W. BOULDIN.

This cause came on regularly for trial on the 2d day of May, 1895, Francis J. Heney appearing as counsel for plaintiffs and Leo Goldschmidt, administrator of the estate of David W. Bouldin, deceased, appearing in his own proper person as the defendant in said cause by reason of the death of said David W. Bouldin having been suggested to the Court

and said Leo Goldschmidt as such administrator having been substituted as defendant in said cause by order of the above-entitled court. A trial by jury having been expressly waived by the respective parties, the cause was tried before the Court sitting without a jury, and witnesses were duly sworn and examined and evidence was introduced and it having been clearly proven that the claims sued upon had been duly and properly filed with said administrator, Leo Goldschmidt, after he had duly qualified as such administrator, and during the pendency of this action, and it further appearing that he had rejected the same, the cause was submitted to the Court for consideration and decision; and after due deliberation thereon the Court finds all the issues for the plaintiffs.

Wherefore, it is ordered, decreed and adjudged that John Ireland and Wilbur H. King, the plaintiffs, do have and recover from Leo Goldschmidt, as administrator of D. W. Bouldin, deceased, the sum of eight thousand five hundred and fifty dollars, with interest thereon at the rate of ten per cent per annum from the date hereof until paid, together with plaintiff's costs and disbursements incurred in this action, amounting to the sum of \$34.45 and that said amount be paid by said Leo Goldschmidt, administrator, in the due course of the administration of the estate of D. W. Bouldin, deceased.

And it further appearing to the Court that a writ of attachment heretofore duly issued in this cause was on the 14th day of March, 1893, levied upon all

of the right, title and interest of D. W. Bouldin in and to the following described real estate, lying, being and situate in the county of Pima, Territory of Arizona, to wit: Location number three (3), being one of five tracts of land selected and located by virtue of and in accordance with the provisions of the sixth section of an act of Congress of the United States approved June 1, 1860, entitled "An Act to Confirm certain private land claims in New Mexico," and found in volume twelve, page 72 of the United States Statutes at Large, said location being described as follows: Situated in the Territory of Arizona, formerly Dona Ana County, New Mexico, beginning at a point one mile and a half from the Salero Mountain in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles, thirty-six chains and thirty-four links; thence south twelve miles, thirty-six chains and thirty-four links; thence east twelve miles, thirty-six chains; thence north twelve miles, thirty-six chains and forty-four links to the [423] place of beginning, containing, ninety-nine thousand, two hundred and eighty-nine acres, and thirty-nine hundredths of an acre, more or less.

And it further appearing to the Court that said attachment suit should be foreclosed, and that all of said property, or a sufficiency thereof, should be sold to satisfy said judgment;

Now, therefore, it is ordered, decreed and adjudged that the said attachment lien as the same existed on the 14th day of March, 1893, be and the same

is hereby foreclosed, and that an order of sale be issued by the clerk of this court, under the seal of this court, directed to the sheriff of the County of Pima, Territory of Arizona, directing him to seize and sell, as under execution, for the purpose of foreclosing the said attachment lien, the right, title and interest of said D. W. Bouldin in the above-described property, as the same existed on the 14th day of March, 1893, or so much thereof as will be necessary to satisfy the said judgment with costs and costs of said sale.

J. D. BETHUNE,
Judge.

Done in open court this 2d day of May, 1895.

Territory of Arizona,
County of Pima,—ss.

I hereby certify that the annexed and foregoing is a full, true and correct copy of the original judgment and order of sale, in the case entitled John Ireland and Wilbur H. King vs. David W. Bouldin, now on file in my office.

WITNESS my hand and the seal of said court this 3 day of July, A. D. 1895.

[Seal] ANDREW J. HALBERT,
Clerk of the District Court of the First Judicial District of the Territory of Arizona, in and for Pima County.

W. P. B. Field,
Deputy Clerk.

[Endorsed]: Filed Aug. 6th, 1895. Andrew J.,
Halbert, Clerk. W. P. B. Field, Deputy Clerk.

*In the Superior Court of the State of Arizona, in
and for the County of Pima.*

No. 2177.

JOHN IRELAND and WILBURN H. KING,
Plaintiffs,
vs.

DAVID W. BOULDIN,
Defendant.

To the Honorable, the Superior Court of the State
of Arizona, in and for Pima County:

Now comes Joseph E. Wise and respectfully
represents to the court:

That on the 13th day of March, 1893, the above-named plaintiffs filed their complaint in the District Court of the First Judicial District of the Territory of Arizona, in and for the county of Pima, against the said David W. Bouldin, wherein they sought to recover judgment against him for the sum of \$5,000, with interest at the rate of 10% per annum upon a certain promissory note, and the further sum of \$744.58 attorney's fees and costs of suit; that thereafter, and on said 13th day of March, 1893, a summons was duly issued out of said court, in said action, which summons was thereafter, and on the 22d day of April, 1893, returned and filed with the clerk of said court, showing the manner of the service thereof; that thereafter and on the 10th day of May, 1893, the said defendant David W. Bouldin did file his demurrer and answer in said court to the said complaint; that on the said 13th day of March, 1893,

the said plaintiffs in said case did file affidavit and bond for writ of attachment, and on said day a writ of attachment did issue out of said court, in said case, directed to the sheriff [425] of said Pima County, requiring him to attach so much of the property of said David W. Bouldin in said county of Pima, as shall be of value sufficient to make said sum of \$5,000, with interest and costs.

That thereafter and on the 14th day of March, 1893, J. P. Scott, who then was the sheriff of said Pima County, did levy said attachment upon the following property of said defendant, to wit: "Location No. 3 (three) being one of five tracts of land selected and located by virtue of and in accordance with the provisions of the sixth section of an act of Congress, of the United States, approved June 21, 1860, entitled "An Act to confirm certain private land claims in New Mexico, and found in volume 12 (Twelve) page 72 of the U. S. Statutes at Large, for further and better description of the above-described property see No. 41, page 597 and following pages Deeds of Real Estate in the Recorder's Office of Tucson, County of Pima, Arizona Territory"; which said writ of attachment, with said return of levy made by said sheriff endorsed thereon, was filed with the said court, on April 22, 1893.

That thereafter the said David W. Bouldin died, and one Leo Goldschmidt, as administrator of the estate of said David W. Bouldin, deceased, was substituted as defendant in the said cause by the order of the said Court, as fully appears from the minutes of said court; that thereafter, and on the 2d day of

May, 1895, the said District Court, aforesaid, did render judgment in said case in favor of the said plaintiffs for the sum of \$8,550, with interest and costs, and in said judgment did further adjudge and decree as follows:

“And it further appearing to the Court that a writ of attachment heretofore duly issued in this cause was on the 14th day of March, 1893, duly levied upon [426] all of the right, title and interest of David W. Bouldin in and to the following described real estate, lying, being and situate in the county of Pima, Territory of Arizona, to wit: Location No. three (3), being one of five tracts of land selected and located by virtue of and in accordance with the provisions of the sixth section of an act of Congress of the United States approved June 21st 1860, entitled “An Act to confirm certain private land claims in New Mexico,” and found in volume 12, page 72 of the United States Statutes at Large, said location being described as follows: Situated in the Territory of Arizona, formerly Dona Ana County, New Mexico, beginning at a point one mile and a half from the Salero Mountain in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles, thirty-six chains and forty-four links, thence south twelve miles, thirty-six chains and thirty-four links; thence east twelve miles, thirty-six chains and thirty-four links; thence north twelve miles, thirty-six chains and thirty-four

links to the place of beginning, and containing ninety-nine thousand, two hundred and eighty-nine acres and thirty-nine hundredths of an acre, more or less.

And it further appearing to the Court that said attachment lien should be foreclosed, and that all of said property, or a sufficiency thereof, should be sold to satisfy said judgment;

Now, Therefore, it is ordered, decreed and adjudged that the said attachment lien as the same existed on the 14th day of March, 1893, be and the same is hereby foreclosed, and that an order of sale be issued by the clerk of this court, under the seal of this court, directed to the sheriff of the county of Pima, Territory of Arizona, directing him to seize and sell as under execution, for the purpose of foreclosing the said attachment lien, the right, title, and interest of said David W. Bouldin, in the above-described property, as the same existed on the 14th day of March, 1893, or so much thereof as will be necessary to satisfy the said judgment with costs and costs of said sale."

which said judgment was duly enrolled and filed as a record of said court on the said 2d day of May, 1895.

That thereafter an order of sale was duly issued out of said District Court under said judgment and decree, foreclosing said attachment lien, aforesaid, and was duly delivered to R. N. Leatherwood, the then sheriff of said Pima County, and that the said sheriff did, under and by virtue of the said execution or order of sale, sell all of the said prop-

erty [427] described in the said judgment aforesaid, at public sale, after giving due notice as required by law; that he did sell the same at public auction on the 31st day of July, 1895, to one Wilbur H. King, for the sum of \$2,000, as fully appears by the return of sale of said sheriff annexed to the said order of sale, and duly filed in said court, on the 6th day of August, 1895.

That a certificate of sale was issued by the said sheriff to the said Wilbur H. King and a duplicate original thereof was duly filed by said sheriff with the county recorder of said Pima County. A copy of the said sheriff's certificate of sale so executed by said sheriff and so filed with said recorder is hereto annexed and made a part hereof.

That no redemption was made from said sale, and thereafter one Lyman W. Wakefield, then sheriff of said Pima County did execute to the said Wilbur H. King, the purchaser at said sheriff's sale, his deed, wherein the said Wakefield, as sheriff, as aforesaid, did attempt to convey the said property, so sold, as aforesaid, to the said purchaser, Wilbur H. King; but that by inadvertence, or mistake, the said deed only purported to convey the right, title and interest which the said Leo Goldschmidt, administrator of the estate of said David W. Bouldin, deceased, had at the date of sale, and did not recite that the same conveyed the interest as had been attached as aforesaid, and foreclosed as aforesaid, under the said judgment of the said Court, aforesaid; and that the said deed contained other mistakes and discrepancies so that it is necessary that a new

deed be executed by the present sheriff of said Pima County, as successor of the said sheriff who made said sale, so as to correct the errors in said deed executed by the said Lyman W. Wakefield, as aforesaid.

A copy of the said deed so executed by said Lyman W. [428] Wakefield is hereto annexed and made a part hereof.

The said deed was duly recorded on the 7th day of February, 1899, in the office of said county recorder of Pima County.

Your petitioner further states that all of the said matters and things aforesaid, are records in the said case in this court, except the said certificate of sale, so executed by said sheriff, and the said deed, so executed by said sheriff, both of which, however, are records in the office of the county recorder of said Pima County, a copy of which said records is hereby annexed.

Your petitioner further represents that on the 24th day of April, 1907, the said Wilbur H. King did execute and acknowledge this deed conveying unto this petitioner, Joseph E. Wise, all of his right, title and interest in and to the said Baca Float or Location No. 3, and being the property so sold to said King at the said sheriff's sale aforesaid, which said deed was thereafter, and on the 24th day of May, 1907, duly recorded in the office of the county recorder of Santa Cruz County, State of Arizona, being the county within the limits of which the said Baca Float No. 3, is now situated the said Santa Cruz County having been created out of the Southern part of said Pima County, which said deed is of record in book 4

of Deeds at page 357 thereof, in the office of said county recorder, aforesaid; a copy of said deed is hereto annexed and made a part hereof, and petitioner, upon the hearing of this petition, will present for the consideration of the Court, the original deed, so recorded as aforesaid, and executed by said Wilbur H. King.

That under and by virtue of said deed your petitioner is the successor in interest of the said King, in and to the [429] property so sold by said sheriff, as aforesaid, and as successor in interest of the said Wilbur H. King, he further represents that no redemption has been made from said sale at any time, and that this petitioner, as the present owner of all of the property so sold by said sheriff at said sale and as the grantee and successor in interest of said Wilbur H. King, the purchaser at said sale, is entitled to have executed to him by the sheriff of Pima County, a deed which property recites the facts in regard to said attachment, judgment foreclosing attachment and sale, and which shall convey to him, as the grantee and successor in interest of the said Wilbur H. King, all of the right, title and interest in said property so sold by the said sheriff at the said sale aforesaid, and so purchased by said Wilbur H. King, at said sale.

WHEREFORE your petitioner prays that John Nelson, the now duly elected, qualified and acting sheriff of said Pima County, State of Arizona, be the successor in the office of sheriff of the said Robert N. Leatherwood, who made said sale, be authorized and directed, as such sheriff, to execute, acknowledge

and deliver to your petitioner, a proper deed, conveying to your petitioner, as the grantee and successor in interest of the said Wilbur H. King, all of the right, title and interest in said property aforesaid, levied upon and attached and foreclosed and sold at the said auction aforesaid, and for such other and further orders as may be meet in the premises.

J. E. WISE.

By SELIM M. FRANKLIN,
His Attorney.

State of Arizona,

County of Santa Cruz,—ss.

Joseph E. Wise being first duly sworn, says: that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof; that the matters [430] therein stated are true of his own knowledge and belief, except as to matters therein stated on information and belief, and as to those matters, he believes the same to be true; and that all the matters stated therein are true in substance and in fact.

JOSEPH E. WISE.

Subscribed and sworn to before me this 26th day of September, 1914.

My commission expires February 13, 1918.

WM. A. JACKSTADT,
Notary Public. (Seal)

{ The sheriff's certificate of sale, the deed from Lyman W. Wakefield, sheriff, to Wilbur H. King, of date January 16, 1899, and the deed from Wilbur H. King to Joseph E. Wise, of date April 24, 1907,

referred to in the foregoing petition, being the same respectfully as Defendants Wise Exhibit 22, Defendants Wise Exhibit 23 and Defendants Wise Exhibit 24, are omitted.) [431]

Wednesday, October 1st, 1914.

The Superior Court of the State of Arizona, in and for Pima County convened pursuant to recess on Wednesday, September 1, 1914, at 10 o'clock A. M.

Hon. WM. F. COOPER, Presiding.

Present: JOHN NELSON, Sheriff of Pima County,
GEORGE O. HILZINGER, County Attorney,

HARRY C. NIXON, Court Reporter.

S. A. ELROD, Clerk.

I. NEUSTATTER, Bailiff.

Court was duly opened by the regular officers, according to law.

No. 2177.

JOHN IRELAND and WILBURN H. KING,
Plaintiffs,

vs.

DAVID W. BOULDIN,

Defendant.

On the petition of Joseph E. Wise, filed herein, it is ordered that John Nelson, sheriff of Pima County, State of Arizona, be and he hereby is authorized and empowered to execute and acknowledge and deliver to Joseph E. Wise, his deed, as such sheriff, conveying to the said Joseph E. Wise, all of the property and all of the right, title and interest in and to the

property sold at sheriff's sale herein, by the said R. N. Leatherwood, as sheriff, under judgment and decree herein of the District Court of the First Judicial District of the Territory of Arizona, in and for the county of Pima, upon the said Joseph E. Wise paying to said John Nelson, the cost and expense of making and executing the said deed; and that a copy of this [432] order be recited in the deed so executed by said John Nelson, sheriff as aforesaid, as his authority for making and executing said deed.

IT IS ORDERED that the Superior Court of the State of Arizona in and for Pima County do now stand at rest.

WILLIAM F. COOPER,
Judge. [433]

*In the Superior Court of the State of Arizona, in and
for the County of Pima.*

No. 2177.

JOHN IRELAND and WILBUR H. KING,
Plaintiffs,

vs.

DAVID W. BOULDIN,
Defendant.

Order Directing Sheriff to Execute New Deed.

Upon the reading and filing of the petition of Joseph E. Wise herein, and an inspection of the records of this court in the above-entitled case, and it appearing to the Court from the said records, that on the 13th day of March, 1893, the above-named plaintiffs filed their complaint in the District Court

of the First Judicial District of the Territory of Arizona, in and for the county of Pima, against the above-named David W. Bouldin, of which Court this Superior Court is the successor, in which suit, plaintiffs sought to recover judgment for certain sums of money against the said defendant; that thereafter, and on said 13th day of March, 1893, a summons was duly issued out of said court in said action, which summons was thereafter, and on the 22d day of April, 1893, returned and filed with the clerk of said court, showing the manner of the service thereof; that thereafter and on the 10th day of May, 1893, the said defendant David W. Bouldin did file his demurrer and answer in said court to the said complaint; that on the said 13th day of March, 1893, the said plaintiffs in said case did file affidavit and bond for writ of attachment, and on said day writ of attachment did issue out of said court in said case, directed to the sheriff of Pima [434] County, requiring him to attach so much of the property of said David W. Bouldin in said county of Pima, as shall be of value sufficient to make said sum of \$5000 with interest and costs.

That thereafter and on the 14th day of March, 1893, J. P. Scott, who then was the sheriff of said Pima County, did levy said attachment upon the following property of said defendant, to wit: "Location No. 3 (three) being one of five tracts of land selected and located by virtue of and in accordance with the provisions of the sixth section of an act of Congress of the United States, approved June 21, 1860, entitled 'An Act to confirm certain private

land claims in New Mexico,' and found in volume 12 (Twelve) page 72 of the U. S. Statutes at Large, for further and better description of the above-described property see No. 41 page 597 and following pages Deeds of Real Estate in the Recorder's Office, in Tucson, County of Pima, Arizona Territory"; which said writ of attachment, with said return of levy made by said sheriff endorsed thereon, was filed with the said court on April 22, 1893.

That thereafter the said David W. Bouldin died, and one Leo Goldschmidt, as Administrator of the Estate of said David W. Bouldin deceased, was substituted as defendant in the said cause by the order of the said Court, as fully appears from the minutes of said court; that thereafter, and on the 2d day of May, 1895, the said District Court aforesaid, did render judgment in said case in favor of the said plaintiffs for the sum of \$8550, with interest and costs, and in said judgment did further adjudge and decree as follows:

"And it further appearing to the Court that a writ of attachment heretofore duly issued in this cause was on the 14th day of March, 1893, duly levied upon all of the right, title and interest of David W. Bouldin in and to the following described real estate, lying, being and situate in the county of Pima, Territory of Arizona, to wit: Location No. three (3) being one of five tracts of land selected and located by virtue of and in accordance with the provisions of the sixth section of an act of Congress of [435] the United States approved June

21, 1860, entitled "An Act to confirm certain private land claims in New Mexico," and found in volume 12 page 72 of the United States Statutes at Large, said location being described as follows: Situated in the Territory of Arizona, formerly Dona Ana County, New Mexico, beginning at a point one mile and a half from the Salero Mountain in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles, thirty-six chains and forty-four links; thence south twelve miles, thirty-six chains and thirty-four links; thence north twelve miles, thirty-six chains and thirty-four links, to the place of beginning, and containing ninety-nine thousand two hundred and eighty-nine acres and thirty-nine hundredths of an acre, more or less.

And it further appearing to the Court that said attachment lien should be foreclosed and that all of said property, or a sufficiency thereof, should be sold to satisfy said judgment;

Now, therefore, it is ordered, decreed and adjudged that the said attachment lien as the same existed on the 14th of March, 1893, be and the same is hereby foreclosed, and that an order of sale be issued by the clerk of this court, under the seal of this court, directed to the sheriff of the county of Pima, Territory of Arizona, directing him to seize and sell as under execution, for the purpose of foreclosing the said attachment lien, the right, title and interest of said David W.

Bouldin, in the above-described property, as the same existed on the 14th day of March, 1893, or so much thereof as will be necessary to satisfy the said judgment with costs and costs of said sale."

which said judgment was duly enrolled and filed as a record of said court on the said 2d day of May, 1895.

That thereafter an order of sale was duly issued out of said District Court under said judgment and decree, foreclosing said attachment lien, aforesaid, and was duly delivered to R. N. Leatherwood, the then sheriff of said Pima County, and that the said sheriff did, under and by virtue of the said execution or order of sale, sell all of the said property described in the said judgment aforesaid, at public sale, after giving due notice as required by law; that he did sell the same at public auction on the 31st day of July, 1895, to one Wilbur H. King for the sum of \$2000, as fully appears by the return of sale of said [436] sheriff annexed to the said order of sale, and duly filed in said court, on the 6th day of August, 1895.

That a certificate of sale was issued by the said sheriff to the said Wilbur H. King and a duplicate original thereof was duly filed by said sheriff with the county recorder of said Pima County.

That no redemption was made from said sale, and thereafter and on the 16th day of January, 1899, one Lyman W. Wakefield then sheriff of said Pima County, did execute to the said Wilbur H. King, the purchaser at said sheriff's sale, his deed, wherein the said Wakefield as sheriff, as aforesaid, did attempt to

convey the said property, so sold, as aforesaid, to the said purchaser, Wilbur H. King; but that by inadvertence or mistake, the said deed only purported to convey the right, title and interest which the said Leo Goldschmidt, administrator of the estate of said David W. Bouldin, deceased, had at the date of sale, and did not recite that the same conveyed the interest which had been attached, as aforesaid, and foreclosed, as aforesaid, under the said judgment of the said Court, aforesaid; and that the said deed contained other mistakes and discrepancies so that it is necessary that a new deed be executed by the present sheriff of said Pima County, as successor of the said sheriff who made said sale, so as to correct the errors in said deed executed by the said Lyman W. Wakefield, as aforesaid, which said deed so executed by said Wakefield, was duly recorded on the 7th day of February, 1899, in book 29 of Deeds at page 590 et seq. thereof in the office of the county recorder of said Pima County.

And it further appearing to the Court that on the 24th day of April, 1907, the said Wilbur H. King did execute, acknowledge and deliver his deed conveying unto said petitioner, Joseph E. Wise, all of his right, title and interest in and to the [437] said Baca Float or Location No. 3, and being the property so sold to said King at said sheriff's sale, aforesaid, which deed was thereafter and on the 24th day of May, 1907, recorded in the office of the county recorder of Santa Cruz County, State of Arizona, in book 4 of Deeds, at page 357 thereof, said Santa Cruz County being the county within the limits of which

the land and premises is now situated, and said Santa Cruz County being the county within the limits of which the land and premises is now situated, and said Santa Cruz County having been created out of the southern part of said Pima County, since the date of said sheriff's sale; and that the said Joseph E. Wise is the grantee and successor in interest of the said Wilbur H. King in and to the property so sold by said sheriff as aforesaid; that no redemption has been made from said sale at any time, and it further appearing that the said Joseph E. Wise, as the grantee and successor in interest of the said Wilbur H. King, the purchaser at said sale, is entitled to have executed to him by the sheriff of Pima County, as successor of the sheriff of Pima County, Territory of Arizona, who made said sale, a deed which properly conveys to him, as the grantee and successor in interest of the said Wilbur H. King, all of the right, title and interest in said property, so foreclosed by the said judgment and decree of this Court, and so sold by the sheriff at the said sale aforesaid, and so purchased by said Wilbur H. King;

NOW, THEREFORE, it is hereby ordered that John Nelson, the present duly elected, acting and qualified sheriff of Pima County, State of Arizona, be, and he hereby is, authorized and empowered to execute and acknowledge and deliver to the said Joseph E. Wise his deed as such sheriff conveying to the said Joseph E. Wise all of the property so sold at the said [438] sheriff's sale, aforesaid, by the said R. N. Leatherwood, as sheriff under the said judgment and decree of the said District Court of

496 *Joseph E. Wise and Lucia J. Wise vs.*

the First Judicial District of the Territory of Arizona, in and for the County of Pima, as aforesaid, upon the said Joseph E. Wise paying to said John Nelson, the cost and expense of making and executing the said deed; and that a copy of this order be recited in the deed so executed by said John Nelson, sheriff as aforesaid, as his authority for making and executing said deed.

Done in open court this 30th day of September, 1914.

WILLIAM F. COOPER,
Judge.

Filed this 30 day of Sept. 1914.

S. A. ELROD,
Clerk. [439]

State of Arizona,
County of Pima,—ss.

I, the undersigned, clerk of the Superior Court of the State of Arizona, in and for the county of Pima, and keeper of the records of said court, and also keeper of the records of the District Court of the First Judicial District of the Territory of Arizona, in and for the county of Pima, do hereby certify the foregoing to be a full, true and correct copy of the records and judicial proceedings of the said District Court of the First Judicial District of the Territory of Arizona, in and for the county of Pima, and of the Superior Court of the State of Arizona, said last-named court being the successor of the said District Court, aforesaid, in that certain suit or action originally brought in the said District Court of the First Judicial District of the Territory of Arizona,

in and for the county of Pima, wherein John Ireland and Wilburn H. King were plaintiffs and David W. Bouldin was defendant, and in which suit or action, Leo Goldschmidt, as administrator of the estate of David W. Bouldin, deceased, was thereafter substituted as defendant, as the same appears from the records and files in my office.

I further certify that no copy of the minute entries made by the said Disrtict Court of the First Judicial District of the Territory of Arizona, in and for the county of Pima, in said case, are set forth or contained in the foregoing copy of said records and proceedings, for the reason that none of the books and records containing the minute entries of the said District Court aforesaid, prior to the year 1900, are in my said office or in my possession, but the same are in the possession and subject to the control of the clerk of the District Court of the United States, in and for the District of Arizona; and for that reason no copies of said minute entries are set forth or contained in the foregoing copy and transcript, aforesaid [440]

IN WITNESS WHEREOF I have hereunto placed my hand and annexed the seal of the said Superior Court of the State of Arizona, in and for the county of Pima, at Tucson, Arizona, this 16th day of December, 1914.

[Seal] S. A. ELROD,
Clerk of the Superior Court of the State of Arizona,
in and for the County of Pima.
[U. S. Int. Rev. Stamp, 10¢. Canceled.]

State of Arizona,
County of Pima,—ss.

I, the undersigned, presiding Judge of the Superior Court of the State of Arizona, in and for the county of Pima, do hereby certify that the foregoing attestation is in due form and by the proper officer.

IN WITNESS WHEREOF, I have hereunto set my hand at Tuscon, Pima County, Arizona, this 16th day of December, 1914.

WILLIAM F. COOPER,
Presiding Judge of the Superior Court of the State
of Arizona, in and for the County of Pima.

[U. S. Int. Rev. Stamp, 10¢, Canceled.] [441]

Defendants Wise Exhibit 20.

*In the District Court of the United States in and for
the District of Arizona.*

JOHN IRELAND et al.

vs.

DAVID W. BOULDIN.

Comes now F. J. Heney, Esq., and suggests to the Court the death of David W. Bouldin, defendant herein and on motion of Francis J. Heney, Esq., Leo Goldschmidt, Esq., administrator of said David W. Bouldin, deceased is substituted for said David W. Bouldin and made defendant herein.

Dated April 25, 1895.

JOHN IRELAND et al.

vs.

DAVID W. BOULDIN.

This cause came on regularly for trial on the 2d day

of May, 1895, Francis J. Heney, Esq., appearing as counsel for plaintiffs and Leo Goldschmidt administrator of the estate of David W. Bouldin, deceased, appearing in his own proper person as the defendant in said cause by reason of the death of David W. Bouldin having been suggested to the Court and said Leo Goldschmidt as such administrator having been substituted as said defendant in said cause by order of the above-entitled court. A trial by jury having been expressly waived by the [442] respective parties, the cause was tried before the Court sitting without a jury, and witnesses were duly sworn and examined and documentary evidence was introduced and it having been clearly proven that the claim sued upon has been duly and properly filed with said administrator, Leo Goldschmidt, after he had duly qualified as such administrator, and during the pendency of this action and it further appearing that he had rejected the same, the cause was submitted to the Court for consideration and decision, and after due consideration thereon the Court finds all the issues herein for the plaintiffs and renders judgment for the said plaintiffs.

Dated May 2, 1895.

United States of America,
District of Arizona,—ss.

I, George W. Lewis, clerk of the District Court of the United States for the District of Arizona, do hereby certify that the above and foregoing to be a true, perfect and complete copy of the minute entry appearing on page fifty (50) under date of April 25, 1895, and the minute entry on page seventy (70) un-

der date of May 2, 1895, of the minutes for the District Court of the First Judicial District in and for the county of Pima, Territory of Arizona, as the same appears from the original record thereof, remaining on file in my office.

WITNESS my hand and the seal of said court, affixed this 28th day of November, A. D., 1914.

[Seal]

GEORGE W. LEWIS,

Clerk.

By Robert E. L. Webb,

Deputy. [443]

Defendants Wise Exhibit 21.

*In the Probate Court in and for the County of Pima,
Territory of Arizona.*

In the Matter of the Estate of DAVID W. BOULDIN, Deceased.

PETITION FOR LETTERS OF ADMINISTRATION.

To the Honorable, the Probate Court of the county of Pima, Territory of Arizona:

The Petition of Leo Goldschmidt of said county, respectfully shows:

That said David W. Bouldin died on or about the — day of January, 1895, in the county of Travis, State of Texas.

That said deceased at the time of his death was a resident of the county of Travis, State of Texas.

That said deceased left estate in the said county of Pima, Territory of Arizona, consisting of real property.

That the value and character of said property, so far as known to your applicant, are as follows, to wit:

An interest in private land claim or grant known as the Baca Grant No. 3 in said county of Pima.

That the estate and effects for or in respect of which letters of administration are hereby applied for, do not exceed the value of eight thousand five hundred dollars.

That the next of kin of said deceased and whom your petitioner . . . advised and believe . . . and therefore allege . . . to be the heirs at law of said deceased, are P. W. Bouldin, aged about 25 years, residing in Travis County, Texas, and — Bouldin, another son of D. W. Bouldin, who reside in said County and is over 21 years of age.

That due search and inquiry have been made to ascertain if said deceased left a will and testament but none have been [444] found and according to the best knowledge, information and belief of your petitioner, said deceased died intestate.

That your petitioner is advised and believes, he is entitled to letters of administration of said estate.

WHEREFORE, your petitioner prays that a day of court may be appointed for hearing this application, that due notice thereof be given by the clerk of said court by posting notice according to law and that upon said hearing and the proofs to be adduced, letters of administration of said estate may be issued to your petitioner.

And your petitioner will ever pray, etc.

(Signed) LEO GOLDSCHMIDT.

502 *Joseph E. Wise and Lucia J. Wise vs.*

Dated April 9, 1895.

HENEY and FORD,

Attorneys for Petitioner.

[Endorsed]: Filed April 9, 1895. J. S. Wood, Ex-officio Clerk. [445]

*In the Probate Court of the County of Pima,
Territory of Arizona.*

In the Matter of the Estate of DAVID W. BOULDIN, Deceased.

**Order Directing Posting of Notice of Application for
Letters of Administration.**

On reading and filing the petition of Leo Goldschmidt, praying for letters of administration of the estate of David W. Bouldin, deceased.

It is ordered that Saturday the 20th day of April, 1895, at 10 o'clock A. M. of that day, at the court-room of this court, at the city of Tucson, in the county of Pima, be appointed for hearing said petition and that the clerk give notice thereof, by causing notices to be posted according to law.

J. S. WOOD,
Probate Judge.

Dated April 9th, 1895.

[Endorsed: Filed April 9, 1895: J. S. Wood, Ex-officio Clerk of the Probate Court. [446]]

In the Probate Court, County of Pima, Territory of Arizona.

In the Matter of the Estate of DAVID W. BOULDIN, Deceased.

**Notice of Application for Letters of Administration
for Posting.**

Notice is hereby given that Leo Goldschmidt has filed with the clerk of this court, a petition praying for letters of administration of the estate of David W. Bouldin, deceased, and that Saturday, the 20th day of April, 1895, at 10 o'clock A. M. of said day, at the courtroom of said court in the city of Tucson, county of Pima, has been set for hearing said petition, when and where any person *interest* may appear and show cause why the petition should not be granted.

Dated April 9, 1895.

J. S. WOOD,
Ex-officio Clerk of the Probate Court.

Territory of Arizona,
County of Pima,—ss.

I do hereby certify that I posted three notices of which the within is a true copy, one on the bulletin board at the front entrance of the courthouse, one on the bulletin board in the corner of Maiden Lane and Court Street, and one on the bulletin board in the Probate Courtroom, all of said notices were posted in the City of Tucson, in said County of Pima, on the 9th day of April, 1895.

J. S. WOOD,
Probate Judge.

[Endorsed]: Filed April 20th, 1895. J. S. Wood,
Ex-officio Clerk of the Probate Court. [447]

KNOW ALL MEN BY THESE PRESENTS:
That we, Leo Goldschmidt, principal, and Ben Heney
and Adolph Goldschmidt, as sureties, are held and
firmly bound to the Territory of Arizona, in the sum
of Three Hundred Dollars (\$300) lawful money of
the United States of America, to be paid to the said
Territory of Arizona, for which payment well and
truly to be made, we bind ourselves, our and each of
our heirs, executors and administrators, jointly and
severally, firmly by these presents:

Sealed with our seals and dated this 20th day of
April, 1895.

The condition of the above obligation is such that
whereas by an order of the Probate Court in and for
the county of Pima, aforesaid, duly made and en-
tered on the 20th day of April, 1895, the above-
bounden Leo Goldschmidt was appointed adminis-
trator of David W. Bouldin, deceased, and letters of
administration were directed to be issued to him,
upon his executing a bond according to law in said
sum of Three Hundred Dollars (\$300).

NOW, THEREFORE, if the said Leo Gold-
schmidt as such administrator shall faithfully exe-
cute the duties of the trust, according to law, then
this obligation to be void, otherwise to remain in full
force and effect.

Signed sealed and delivered in the presence of:

LEO GOLDSCHMIDT. (Seal)

BEN HENEY. (Seal)

ADOLF GOLDSCHMIDT. (Seal)

Territory of Arizona,
County of Pima,—ss.

Ben Heney and Adolf Goldschmidt, the sureties whose names are subscribed in the above undertaking, being severally duly sworn each for himself says, that he is a resident and freeholder in said Territory of Arizona, and is worth the sum in the said undertaking specified as the penalty thereof, over [448] and above all his just debts and liabilities, exclusive of property exempt from execution.

(Signed) BEN HENEY.

(Signed) ADOLF GOLDSCHMIDT.

Subscribed and sworn to before me this 20th day of April, 1895.

[Seal] T. K. MILLER,
Notary Public, Pima County, Arizona.

[Endorsed]: Approved this 20th day of April, 1895.

J. S. WOOD,
Probate Judge.

Filed April 20, 1895. J. S. Wood, Ex-officio Clerk of the Probate Court. [449]

In the Probate Court of the County of Pima, Territory of Arizona.

In the Matter of the Estate of DAVID W. BOULDIN, Deceased.

Order Appointing Administrat—

The petition of Leo Goldschmidt, praying for letters of administration of the estate of David W.

Bouldin, deceased, coming on regularly to be heard; and due proof having been made to the satisfaction of this Court that the clerk had given notice in all respects according to law; and all and singular the law and evidence by the Court understood and fully considered; whereupon it is by the Court here adjudged and decreed that the said David W. Bouldin died on the —— day of January, 1895, intestate, in the county of Travis, State of Texas; that he was a resident of the said county of Travis at the time of his death and that he left estate in the county of Pima, and within the jurisdiction of this court.

It is Ordered that letters of administration of the estate of the said David W. Bouldin, deceased, issue to the said petitioner Leo Goldschmidt, upon his taking the oath and filing a bond according to law in the sum of Three Hundred (\$300) Dollars.

Dated April 20th, 1895.

J. S. WOOD,
Probate Judge.

[Endorsed]: Filed April 20th, 1895. J. S. Wood
Ex-officio Clerk of the Probate Court. [450]

*In the Probate Court of Pima County, Territory of
Arizona.*

In the Matter of the Estate of DAVID W. BOULDIN, Deceased.

Letters of Administration.

Territory of Arizona,
County of Pima,—ss.

Leo Goldschmidt is hereby appointed adminis-

trator of the Estate of David W. Bouldin, deceased.

Witness John S. Wood, Judge and Ex-officio Clerk of the Probate Court of the county of Pima, Territory of Arizona, with the seal thereof affixed, the 20th day of April, 1895.

By order of the Court.

[Seal]

J. S. WOOD,

Ex-officio Clerk of the Probate Court.

Territory of Arizona,

County of Pima,—ss.

I, Leo Goldschmidt, do solemnly swear that I will support the constitution of the United States and the laws of this Territory, and that I will faithfully perform, according to law, the duties of administrator of the estate of David Bouldin, deceased.

LEO GOLDSCHMIDT.

Subscribed and sworn to before me the 20th day of April, 1895.

J. S. WOOD,

Ex-officio Clerk of the Probate Court.

[Endorsed]: Filed April 20, 1895. J. S. Wood,
Clerk of the Probate Court. [451]

In the Probate Court of the County of Pima, Territory of Arizona.

In the Matter of the Estate of DAVID W. BOULDIN, Deceased.

Order Appointing Appraisers.

Letters of Administration having been issued herein to Leo Goldschmidt, and application being

508 *Joseph E. Wise and Lucia J. Wise vs.*

made for the appointment of appraisers to appraise the estate of said David W. Bouldin, deceased.

It is Ordered that Alfred J. Goldschmidt, S. G. Rowe, George Shand, three disinterested and capable persons be and they are hereby appointed such appraisers.

Dated April 20th, 1895.

J. S. WOOD,
Probate Judge.

[Endorsed]: Filed April 20th, 1895. J. S. Wood,
Ex-officio Clerk of the Probate Court. [452]

*In the Probate Court of the County of Pima, Terri-
tory of Arizona.*

In the Matter of the Estate of DAVID W. BOULDIN, Deceased.

I, John S. Wood, Judge, county clerk of the county of and ex-officio clerk of the Probate Court of Pima County, do hereby certify that Alfred J. Goldschmidt, S. G. Rowe and George Shand were duly appointed appraisers of the estate of the above-named deceased by order of the said Court duly entered and recorded on the 20th day of April, 1895.

Witness my hand and the seal of said court this
20th day of April, 1895.

[Seal]

J. S. WOOD,

Ex-officio Clerk of the Probate Court.

Territory of Arizona,
County of Pima,—ss.

Alfred J. Goldschmidt, S. G. Rowe and George Shand, duly appointed appraisers of the estate of

David W. Bouldin, deceased, being duly sworn each for himself says: That he will truly, honestly and impartially appraise the property of said estate which shall be exhibited to him, according to the best of his knowledge and ability.

ALFRED J. GOLDSCHMIDT,
S. G. ROWE.

Subscribed and sworn to before me this 20th day of April, 1895.

[Seal]

T. K. MILLER,

Notary Public, Ex-officio Clerk. [453]

Territory of Arizona,
County of Pima,—ss.

Oath of Executor of Administrator.

Leo Goldschmidt, the administrator of David W. Bouldin, deceased, being duly sworn says that the annexed inventory contains a true statement of all the estate of the said deceased, which has come to the knowledge and possession of this affiant and particularly of all money belonging to the said deceased, and of all just claims of the said deceased against the said affiant.

LEO GOLDSCHMIDT.

Subscribed and sworn to before me this 20th day of April, 1895.

[Seal]

J. S. WOOD,
Probate Judge.

Estate of DAVID W. BOULDIN, Deceased, to
_____, Appraisers, Dr.

To compensation for service in appraising said estate; items as follows:

One day service at \$3 per day each.....\$6

Territory of Arizona,
County of Pima,—ss.

The appraisers above named being duly sworn each for himself says that the foregoing bill of items is correct and just and that the services have been duly rendered as therein set forth.

ALFRED J. GOLDSCHMIDT,
S. G. ROWE.

Subscribed and sworn to before me this 20th day of April, 1895.

[Seal]

T. K. MILLER,
Notary Public. [454]

An undivided interest in a certain tract of land situated in the county of Pima, Territory of Arizona, known and called the Baca Float No. 3, the estate mentioned in the foregoing inventory is —— property.

We, the undersigned, duly appointed appraisers of the estate of David W. Bouldin, deceased, hereby certify that the property mentioned in the foregoing inventory has been exhibited to us and that we appraise the same at the sum of Two Hundred and Fifty Dollars (\$250).

ALFRED J. GOLDSCHMIDT,
Appraiser.

S. G. ROWE,
Appraiser.

Dated April 20th, 1895.

[Endorsed]: Filed April 20th, 1895. J. S. Wood,
Ex-officio Clerk of the Probate Court.

In the Probate Court of the County of Pima, Territory of Arizona.

In the Matter of the Estate of DAVID W. BOULDIN, Deceased.

Order Directing that Notice be Given to Creditors.

It is hereby ordered that notice be given by the administrator of the estate of said David W. Bouldin, deceased, by publication for four weeks in the Arizona Daily Citizen, a newspaper printed in Pima County, to the creditors of and persons having claims against said deceased to present them to said Leo Goldschmidt with the proper vouchers within four months after the first publication of this notice.

Dated April 20th, 1895.

J. S. WOOD,
Probate Judge.

[Endorsed]: Filed April 20, 1895. J. S. Wood,
Ex-officio Clerk of the Probate Court. [455]

State of Arizona,
County of Pima,—ss.

I, the undersigned, clerk of the Superior Court of the State of Arizona, in and for the county of Pima, and keeper of the records of said court, and also keeper of the records of the Probate Court of Pima County, Territory of Arizona, of which said court the said Superior Court aforesaid is the successor, do hereby certify the foregoing to be a full, true and correct copy of the records and judicial proceedings of the said Probate Court of Pima County, Territory of Arizona, and of the Superior Court of the State of

Arizona, in and for the county of Pima, in that certain matter or proceeding originally brought and instituted in the said Probate Court of the county of Pima, Territory of Arizona, in the matter of the estate of David W. Bouldin, deceased, and which said matter or proceeding is still pending before the said Superior Court of the State of Arizona, in and for said county of Pima.

IN WITNESS WHEREOF, I have hereunto placed my hand and annexed the seal of the said Superior Court of the State of Arizona, in and for the county of Pima, at Tucson, Arizona, this 23d day of January, 1915.

S. A. ELROD,

Clerk of the Superior Court of the State of Arizona,
in and for the County of Pima.

[U. S. Int. Rev. Stamps 10c. Cancelled.]

State of Arizona,
County of Pima,—ss.

I, the undersigned, presiding Judge of the Superior Court of the State of Arizona, in and for the county of Pima, do hereby certify that the foregoing attestation is in due form and by the proper officer.

IN WITNESS WHEREOF, I have hereunto set my hand at Tucson, Pima County, Arizona, this 23d day of January, 1915.

WILLIAM F. COOPER,
Judge of the Superior Court of the State of Arizona,
in and for the County of Pima. [456]

Defendants Wise Exhibit 22.

*In the District Court of the First Judicial District
of the Territory of Arizona, in and for the
County of Pima.*

JOHN IRELAND and WILBUR H. KING,
Plaintiff,
vs.

**LEO GOLDSCHMIDT, Administrator of the Es-
tate of David W. Bouldin, Deceased,**
Defendant.

**SHERIFF'S CERTIFICATE OF SALE OF
REAL ESTATE ON EXECUTION.**

I, Robt. N. Leatherwood, sheriff of the county of Pima, do hereby certify that by virtue of an execution in the above-entitled action, tested the third day of July, 1895, by which I was commanded to take the amount of eight thousand, five hundred and fifty (\$8,550) and thirty-four and forty-five one hundredths (\$34.45), dollars, costs of suit, lawful money of the United States, to satisfy the judgment in said action, with costs and interests thereon, out of the personal property of David W. Bouldin (deceased), Leo Goldschmidt, administrator of the defendant in said action, and if sufficient personal property cannot be found, then out of the real property belonging to the said defendant on 31st day of July, 1895, or at any time thereafter, as by the said writ, reference being hereunto had, more fully appears; I levied on and this day sold at public auction, according to the statute in such cases made and provided, to Wil-

bur H. King, who was the highest and best bidder, for the sum of Two Thousand Dollars (\$2,000) lawful money of the United States, which was the whole price bid by him for the same, the real estate particularly described as follows, to wit:

Location No. 3, being one of five tracts of land, selected and located by virtue of and in accordance with the provisions of the Sixth section of an [457] act of Congress, of the United States, approved June 21st, 1860, entitled "An Act to confirm certain private land claims in New Mexico," and found in volume twelve, page 72 of the *United States at Large*, said location being described as follows: Situated in the Territory of Arizona, formerly Dona Ana County, New Mexico, beginning at a point one mile and a half from the Salero Mountain in a direction North forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles, thirty-six chains and thirty-four links; thence south twelve miles, thirty-six chains and thirty-four links; thence east twelve miles, thirty-six chains and thirty-four links; thence north twelve miles, thirty-six chains and thirty-four links to the place of beginning, containing ninety-nine thousand, two hundred and eight-nine acres and thirty-nine hundredths of an acre more or less. and the said real estate was sold in one parcel and that the price of each distinct lot and parcel was as follows: Two Thousand (\$2,000) Dollars, and that the said real estate is subject to redemption in lawful

money of the United States, pursuant to the statute in such cases made and provided.

Given under my hand this 31st day of July, 1895.

ROBT. N. LEATHERWOOD,

Sheriff.

By W. H. Taylor,

Under-sheriff.

Filed Aug. 6th, 1895.

State of Arizona,

County of Pima,—ss.

I, the undersigned, county recorder of the county of Pima, State of Arizona, and the keeper of the records of said county, do hereby certify the foregoing to be a full, true and correct copy of the record of the original instrument of which the same purports to be a copy, as the same is of record in my office and that the original of said instrument was duly recorded in my office on the 6th day of August, 1895.

In Witness Whereof I have hereunto placed my hand and affixed my official seal as such county recorder, this 27 day of November, 1914.

P. E. HOWELL,

County Recorder of Pima County, State of Arizona.

[458]

Defendants Wise Exhibit 23.

THIS INDENTURE, made the sixteenth day of January in the year of our Lord one thousand eight hundred and ninety-nine between Lyman W. Wakefield, Sheriff of the County of Pima, Territory of Arizona, the party of the first part, and Wilbur H. King, of Sulphur Springs Texas, the party of the

second part, Whereas by virtue of a writ of execution issued out of and under the seal of the District Court of the First Judicial District of the Territory of Arizona, tested the third day of July, 1895, upon a judgment recovered in the said court on the second day of May, 1895, in favor of John Ireland and Wilber H. King, and against Leo Goldschmidt, administrator of the estate of David W. Bouldin, deceased, to the said sheriff directed and delivered commanding him that out of the personal property of the said judgment debtor, Leo Goldschmidt, administrator of the estate of David W. Bouldin, deceased, in his county he should cause to be made certain moneys in the said writ specified and if sufficient personal property of the said judgment debtor Leo Goldschmidt, administrator of the estate of David W. Bouldin, deceased, could not be found then he should cause the amount of said judgment to be made out of the real property belonging to said judgment debtor Leo Goldschmidt, administrator of the estate of David W. Bouldin, deceased, on the thirty-first day of July, 1895, or at any time afterwards. And Whereas, because sufficient personal property of the said judgment debtor Leo Goldschmidt, administrator of the estate of David W. Bouldin, deceased, could not be found whereof the said sheriff could cause to be made the moneys specified in said writ, the said sheriff did in obedience to said command levy on, take and seize all the right, title, interest and claim which the said judgment debtor Leo Goldschmidt, administrator of the estate of David W. Bouldin, deceased, so had to the land, tenements,

real estate and premises hereinafter particularly set forth and described [459] with the appurtenances, and did on the thirty-first day of July, 1895, sell all the right, title, interest and claim of said judgment debtor Leo Goldschmidt, administrator, of in and to the said premises, at public auction, in front of the courthouse, in the city of Tucson, in said Pima County of the Territory of Arizona, between the hours of nine in the morning and five in the afternoon of that day, namely, at 12 o'clock, M., after having first given due notice of the time and place of such sale by publication according to law, at which sale all the right, title, interest and claim of the said judgment debtor Leo Goldschmidt, administrator of the estate of David W. Bouldin, in and to the said premises were struck off and sold to Wilber H. King, one of the said parties of the second part, for the sum of two thousand dollars lawful money of the United States of America, the said Wilber H. King, one of the parties of the second part being the highest bidder and that being the highest sum bid for the same. Whereupon the said sheriff after receiving from the said purchaser the said sum of money so bid as aforesaid, gave to Wilber H. King, the said parties of the second part, such certificate of said sale as is by law directed to be given and a duplicate of such certificate was duly filed by the said sheriff in the office of the recorder of the said county of Pima. And Whereas, six months after said sale having expired without any redemption of the said premises having been made.

Now this indenture witnesseth that the said Lyman

W. Wakefield, the sheriff, aforesaid, by virtue of the said writ and in pursuance of the statute in such case made and provided for and in consideration of the said sum of money to him in hand paid as aforesaid, by Wilber H. King, one of the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed and by these presents does grant, bargain, sell, [460] convey and confirm unto Wilber H. King, one of the said parties of the second part, and to his heirs and assigns forever, all the right, title, interest and claim which the said judgment debtor Leo Goldschmidt, administrator of the estate of David W. Bouldin, deceased, had on the said thirty-first day of July, 1895, or at any time afterwards, or now have in and to all that certain lot, piece or parcel of land, situated, lying and being in the said county of Pima, Territory of Arizona, and bounded and particularly described as follows, to wit: Location Number three (3) being one of five tracts of land selected and located by virtue of and in accordance with the provisions of the sixth section of an act of Congress of the United States, approved June 21st, 1860, entitled, an act to confirm certain private land claims in New Mexico, and found in volume twelve, page 72 of the *United States at Large*, said location being described as follows: Situated in the Territory of Arizona, formerly Dona Ana County, New Mexico, beginning at a point one mile and a half from the Salero Mountain in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point west

twelve miles, thirty-six chains and thirty-four links; thence south twelve miles, thirty-six chains and thirty-four links; thence east twelve miles, thirty-six chains and thirty-four links; thence north twelve miles, thirty-six chains and thirty-four links to the place of beginning. Containing ninety-nine thousand, two hundred and eighty-nine acres and thirty-nine hundredths of an acre more or less.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining. To Have and to Hold the said premises with the appurtenances unto the said party, his heirs and assigns forever, as fully and absolutely as the said sheriff can, may or ought to, by virtue of said writ and of the statute in such case made and provided, grant, bargain, sell, convey and confirm the same. [461]

In Witness Whereof, the said sheriff the said party of the first part has hereunto set his hand and seal the day and year first above written.

LYMAN W. WAKEFIELD, (Seal)
Sheriff of the said County of Pima, Territory of
Arizona.

Signed, sealed and delivered in presence of,

FRANCIS M. HARTMAN,
CLINDON D. HOOVER.

[\$2.00 U. S. Int. Rev. Stamp.]

Territory of Arizona,
County of Pima,—ss.

On this sixteenth day of January, A. D., Eighteen hundred and ninety-nine, personally appeared before me, the within named Lyman W. Wakefield, sheriff

of the said county of Pima, Territory of Arizona, known to me to be the same person whose name is subscribed to the within instrument and he acknowledged to me that he as such sheriff of said Pima County, executed the same.

In Witness Whereof, I have hereunto set my hand and affixed official seal at my office in the said county of Pima, Territory of Arizona, the day and year in this certificate first above written.

[Seal] CLINTON D. HOOVER,
Clerk of District Court, in and for Pima County, Arizona.

Filed and recorded at request of G. B. Henery, February 7th, A. D. 1899, at 1:30 P. M.

CHAS. A. SHIBELL,
County Recorder. [462]

Defendants Wise Exhibit 26.

THIS INDENTURE, made the 5th day of October, in the year of our Lord, one thousand nine hundred and fourteen, between John Nelson, sheriff of the county of Pima, State of Arizona, the party of the first part, and Joseph E. Wise of Santa Cruz County, State of Arizona, the party of the second part, WITNESSETH:

Whereas, in a certain judgment or decree made and entered by the District Court of the First Judicial District of the Territory of Arizona, in and for the county of Pima, on the 2d day of May, 1895, in a certain action then pending in said court, wherein John Ireland and Wilburn H. King were plaintiffs and Leo Goldschmidt, administrator of the estate of David W. Bouldin, was defendant, said case having

been originally brought against the said David W. Bouldin, in his lifetime, it was, among other things, ordered, adjudged and decreed that a certain attachment lien as the same existed on the 14th day of March, 1893, levied upon all of the right, title and interest of said David W. Bouldin, in and to the real property in said judgment or decree and hereinafter described, be foreclosed, and that an order of sale be issued by the clerk of said court under the seal of said court, directed to the sheriff of the county of Pima, Territory of Arizona, directing him to seize and sell, as under execution, for the purpose of foreclosing said attachment lien, the right, title and interest of said David W. Bouldin, in and to the property described in said judgment or decree, and hereinafter described, as the same existed on the 14th day of March, 1893, or so much thereof as would be necessary to satisfy the said judgment, with costs and costs of sale, at public auction, in the manner required by law and according to the course and practice of said court;

And Whereas, an order of sale was duly issued under said judgment and decree aforesaid, out of said District Court, [463] aforesaid, and directed to the said sheriff of Pima County, and was duly delivered to R. N. Leatherwood, the then sheriff of said Pima County, for execution; and Whereas, the said sheriff did, at the hour of 12 o'clock M., on the 31st day of July, 1895, after due public notice had been given, as required by the laws of the Territory of Arizona, and the course and practice of said District Court, duly sell at public auction, in the said county

of Pima, agreeably to the said judgment and decree and order of sale aforesaid, and the provisions of law, the premises in the said judgment mentioned, at which sale the premises in the said judgment or decree, and hereinafter described, were fairly struck off to Wilbur H. King, for the sum of \$2,000, he being the highest bidder and that being the highest sum bid for the same, which consideration was thereupon paid to the said sheriff by said Wilbur H. King;

And Whereas, said sheriff thereupon made and issued the usual certificate, in duplicate, of the said sale, in due form of law, and delivered one thereof to the said purchaser, and caused the other to be filed in the office of the county recorder in said county of Pima; and

Whereas, more than six months had elapsed since the date of said sale and no redemption had been made of the premises, so sold as aforesaid, by or on behalf of said judgment debtor, or by or on behalf of any other person whatsoever.

And Whereas, thereafter and on the 16th day of January, 1899, Lyman W. Wakefield, the then sheriff of the said county of Pima, Territory of Arizona, did execute, acknowledge and deliver to the said Wilbur H. King, as the purchaser at said sale a deed, in which he purported to convey to said Wilbur H. King, the said property so sold, as aforesaid, and which said deed was thereafter recorded in the office of the county recorder of said Pima County, in book 29 of Deeds, at pages 59 et seq. thereof; and Whereas, thereafter and on or about the 24th day of [464]

April, 1907, the said Wilbur H. King did assign and convey all of his interest in the said property aforesaid, to Joseph E. Wise, the party of the 2d part hereto, as fully appears from the deed signed, executed and acknowledged by said Wilbur H. King of said date, and recorded in the office of the county recorder of Santa Cruz County, State of Arizona, in book 4 Deeds of Real Estate, at page 357 et seq. thereof; and whereas, the said deed, so executed by said Lyman W. Wakefield, sheriff, as aforesaid, is alleged to be defective in divers and sundry parts, and the said Joseph E. Wise has made application to the Superior Court of the State of Arizona, in the said case aforesaid, for an order, authorizing and directing the party of the first part hereto, as sheriff of said Pima County, and as successor in office of the said R. N. Leatherwood, as sheriff, as aforesaid, to execute to him, the said Joseph E. Wise, as the successor in interest and grantee of the said Wilbur H. King, a new and proper deed upon the said sale aforesaid; and Whereas, the said Superior Court of the State of Arizona, in and for the county of Pima, did, upon said application, make and sign its order in the said matter, a certified copy of which order has been delivered to the party of the first part hereto, as sheriff, which said order of said Court is in words and figures following, to wit:

*In the Superior Court of the State of Arizona, in and
for the County of Pima.*

No. 2177.

JOHN IRELAND and WILBURN H. KING,
Plaintiffs,
vs.

DAVID W. BOULDIN,

Defendant. [465]

Order Directing Sheriff to Execute New Deed.

Upon the reading and filing of the petition of Joseph E. Wise herein, and an inspection of the records in this court in the above-entitled case, and it appearing to the Court from the said records, that on the 13th day of March, 1893, the above-named plaintiffs filed their complaint in the District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima, against the above-named David W. Bouldin, of which court this *Superior* is the successor, in which suit, plaintiffs sought to recover judgment for certain sums of money against the said defendant; that thereafter, and on said 13th day of March, 1893, a summons was duly issued out of said court in said action, which summons was thereafter, and on the 22d day of April, 1893, returned and filed with the clerk of said court, showing the manner of the service thereof; that thereafter and on the 10th day of May, 1893, the said defendant David W. Bouldin did file his demurrer and answer in said court to the said complaint; that on the said 13th day of March, 1893, the said plaintiffs in said case did file affidavit and bond for writ

of attachment, and on said day a writ of attachment did issue out of said court in said case, directed to the sheriff of Pima County, requiring him to attach so much of the property of said David W. Bouldin in said county of Pima, as shall be of value sufficient to make said sum of \$5000., with interest and costs.

That thereafter and on the 14th day of March, 1893, J. P. Scott, who then was the sheriff of said Pima County, did levy said attachment upon the following property of said defendant, to wit: 'Location No. 3 (three) being one of five tracts of land selected and located by virtue of and in accordance with the provisions of the Sixth section of an act of Congress of the United States, approved June 21, 1860, entitled "An Act to confirm certain private land claims in New Mexico,"' and found in Volume 12 (Twelve) page 73 of the United States Statutes at Large, for further and better description of the above described property see No. 41, page 597 and following pages Deeds of Real Estate in the Recorder's Office of Tucson, County of Pima, Arizona Territory'; which said writ of attachment with said return of levy made by said sheriff endorsed thereon, was filed with the said court on April 22, 1893.

That thereafter the said David W. Bouldin died, and one Leo Goldschmidt, as administrator of the estate of said David W. Bouldin, deceased, was substituted as defendant in the said cause, by the order of the said Court, as fully appears from the minutes of said court; and thereafter, and on the 2d day of May, 1895, the said District Court aforesaid, did render judgment in said case in favor of the said plain-

tiffs, for the sum of \$8,550, with interest and costs, and in said judgment did further adjudge and decree as follows:

‘And it further appearing to the Court that a writ of attachment heretofore duly issued in this cause was on the 14th day of March, 1893, duly levied on all of the right, title and interest of David W. Bouldin in and to the following described [466] real estate, lying being and situate in the County of Pima, Territory of Arizona, to wit: Location No. three (3), being one of five tracts of land selected and located by virtue of and in accordance with the provisions of the sixth section of an act of Congress of the United States approved June 21, 1860, entitled “An Act to confirm certain private land claims in New Mexico,” and found in volume 12 page 72 of the United States Statutes at Large, said location being described as follows: Situated in the Territory of Arizona, formerly Dona Ana County, New Mexico, beginning at a point one mile and a half from the Salero Mountain in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles, thirty-six chains and forty-four links, thence south twelve miles, thirty-six chains and thirty-four links; thence east twelve miles, thirty-six chains and thirty-four links; thence north twelve miles, thirty-six chains and thirty-four links to the place of beginning, and containing ninety-nine thousand two hundred and

eighty-nine acres and thirty-nine hundredths of an acre, more or less.

And it further appearing to the Court that said attachment lien should be foreclosed, and that all of said property, or a sufficiency thereof, should be sold to satisfy said judgment;

Now, therefore, it is ordered, decreed and adjudged, that the said attachment lien as the same existed on the 14th day of March, 1893, be and the same is hereby foreclosed, and that an order of sale be issued by the clerk of this court, under the seal of this court, directed to the sheriff of the county of Pima, Territory of Arizona, directing him to seize and sell as under execution, for the purpose of foreclosing the said attachment *lien*, the right, title and interest of said David W. Bouldin in the above-described property, as the same existed on the 14th day of March, 1893, or so much thereof as will be necessary to satisfy the said judgment with costs and costs of said sale.'

which said judgment was duly enrolled and filed as a record of said court on the said 2d day of May, 1895.

That thereafter an order of sale was duly issued out of said District Court under said judgment and decree, foreclosing said attachment lien, aforesaid, and was duly delivered to R. N. Leatherwood, the then sheriff of said Pima County, and that the said sheriff did, under and by virtue of the said execution or order of sale, sell all of the said property described in the said judgment aforesaid, at public

sale, after giving due notice as required by law; that he did sell the same at public auction on the 31st day of July, 1895, to one Wilbur H. King, for the sum of \$2,000, as fully appears by the return of sale of said sheriff, annexed to the said order of sale, and duly filed in said court, on the 6th day of August, 1895.

That a certificate of sale was issued by the said sheriff to the said Wilbur H. King and a duplicate original thereof [467] was duly filed by said sheriff with the county recorder of said Pima County.

That no redemption was made from said sale, and thereafter and on the 16th day of January, 1899, one Lyman W. Wakefield, then sheriff of said Pima County, did execute to the said Wilbur H. King, the purchaser of said sheriff's sale, his deed, wherein, the said Wakefield as sheriff, as aforesaid, did attempt to convey the said property, so sold as aforesaid, to the said purchaser, Wilbur H. King; but that by inadvertence or mistake, the said deed only purported to convey the right, title and interest which the said Leo Goldschmidt, administrator of the estate of said David W. Bouldin, deceased, had at the date of sale, and did not recite that the same conveyed the interest which had been attached as aforesaid, and foreclosed as aforesaid, under the said judgment of the said Court aforesaid; and that the said deed contained other mistakes and discrepancies so that it is necessary that a new deed be executed by the present sheriff of said Pima County, as a successor of the said sheriff who made said sale, so

as to correct the errors in said deed executed by said Lyman W. Wakefield, as aforesaid, which said deed so executed by said Wakefield, was duly recorded on the 7th day of February, 1899, in book 29 of Deeds at page 590 *et seq.* thereof, in the office of the county recorder of said Pima County.

And it further appearing to the Court that on the 24th day of April, 1907, the said Wilbur H. King did execute, acknowledge and deliver his deed conveying unto said petitioner, Joseph E. Wise, all of his right, title and interest in and to the said Baca Float or Location No. 3, and being the property so sold to said King at said sheriff's sale aforesaid, which deed was thereafter and on the 24th day of May, 1907, recorded in the office of the county recorder of Santa Cruz County, State of Arizona, in book 4 of Deeds, at page 357 thereof, said Santa Cruz County being the county within the limits of which the land and premises is now situated, and said Santa Cruz County having been created out of the southern part of said Pima County, since the date of said sheriff's sale; and that the said Joseph E. Wise is the grantee and successor in interest of the said Wilbur H. King in and to the property so sold by said sheriff as aforesaid; that no redemption has been made from said sale, at anytime, and it further appearing that the said Joseph E. Wise, as the grantee and successor in interest of said Wilbur H. King, the purchaser at said sale, is entitled to have executed to him by the sheriff of Pima County, as successor of the sheriff of Pima County, Territory of Arizona, who made said sale, a deed which prop-

erly conveys to him, as the grantee and successor in interest of the said Wilbur H. King, all of the right, title and interest in said property so foreclosed by the said judgment and decree of this Court and so sold by the said sheriff at the said sale aforesaid, and so purchased by said Wilbur H. King;

NOW, THEREFORE, it is hereby ordered that John Nelson, the present duly elected, acting and qualified sheriff of Pima County, State of Arizona, be and he hereby is, authorized and empowered to execute and acknowledge and deliver to the said Joseph E. Wise, his deed as such sheriff conveying to the said Joseph W. Wise, all of the property and all of the right, title and interest in and to the property so sold at the said sheriff's sale aforesaid, by the said R. N. Leatherwood, [468] as sheriff under the said judgment and decree of the said District Court of the First Judicial District of the Territory of Arizona, in and for the county of Pima, as aforesaid, upon the said Joseph E. Wise paying to said John Nelson the cost and expense of making and executing the said deed; and that a copy of this order be recited in the deed so executed by said John Nelson, sheriff as aforesaid, as his authority for making and executing said deed.

Done in open court this 29th day of September, 1914.

WILLIAM F. COOPER,
Judge.

NOW, THEREFORE, this indenture witnesseth: That the party of the first part, the said sheriff aforesaid, in order to carry into effect the sale so

made by the said R. N. Leatherwood, sheriff, as aforesaid, in pursuance of said judgment or decree and order of sale aforesaid, and in order to carry into effect the said order of the said Superior Court of the State of Arizona in and for Pima County, aforesaid, and also in consideration of the premises and of the sum of money so bid and paid by the said purchaser, the said Wilbur H. King, to the said R. N. Leatherwood, as aforesaid, upon said sale, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell and convey unto the said Joseph E. Wise, as the grantee and successor in interest of the said Wilbur H. King, the party of the second part hereto, and to his heirs and assigns forever, all of the right, title, and interest of the said David W. Bouldin, as the same existed on the 14th day of March, 1893, and all the right, title and interest which the said David W. Bouldin had, on the said 14th day of March, 1893, in and to the following described real estate, lying, being and situate in the then county of Pima, Territory of Arizona, now county of Santa Cruz, in the State of Arizona, the said county of Santa Cruz having been created out of the said Pima County by act of the Legislature of the Territory of Arizona, since the said 14th day of March, 1893, to wit:

“Location No. three (3), being one of five tracts of land selected and located by virtue of [469] and in accordance with the provisions of the sixth section of an act of Congress of the United States, approved June 21, 1860, entitled ‘An Act to confirm certain private land claims

in New Mexico,' and found in volume 12, page 72 of the United States Statutes at Large, said location being described as follows: Situated in the Territory of Arizona, formerly Dona Ana County, New Mexico, beginning at a point one mile and a half from the Salero Mountain in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles, thirty-six chains and forty-four links, thence south twelve miles, thirty-six chains and forty-four links, thence east twelve miles, thirty-six chains and thirty-four links; thence north twelve miles, thirty-six chains and thirty-four links to the place of beginning, and containing ninety-nine thousand two hundred and eighty-nine acres and thirty-nine hundredths of an acre, more or less.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the rents, issues and profits thereof.

To Have and to Hold, all and singular the said premises hereby conveyed, or intended so to be, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In Witness Whereof, the party of the first part to these presents, as sheriff as aforesaid, has hereunto set his hand and seal, the day and year first above written.

JOHN NELSON,

Sheriff of the County of Pima, State of Arizona.

Signed and sealed in the presence of

State of Arizona,
County of Pima,—ss.

On this 5th day of October, 1914, personally appeared before me, a notary public, in and for said county of Pima the above-named John Nelson, sheriff of the county of Pima, State of Arizona, known to me to be the person described in and whose name is subscribed to the within instrument as such sheriff, and he, the said John Nelson, acknowledged to me that [470] he, as such sheriff of said Pima County, executed the same for the purposes and considerations therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in the said county of Pima, State of Arizona, on this 5th day of October, 1914.

[Seal]

S. A. ELROD,
Clerk Superior Court.

Filed and recorded at request of J. E. Wise October 26, A. D., 1914, at 9:45 A. M.

PHIL HEROLD,
County Recorder.

State of Arizona,
County of Santa Cruz,—ss.

I, the undersigned, county recorder of the county of Santa Cruz, State of Arizona, and the keeper of the records of said county do hereby certify the foregoing to be a full true and correct copy of the record of the original instrument of which the same purports to be a copy, as the same is of record in my office in book 8, Deeds of Real Estate, at pages 29 to

36 inc., and that the original of said instrument was duly recorded in my office in the said book and page aforesaid on the 28 day of October, 1914.

In Witness Whereof, I have hereunto placed my hand and affixed by official seal as such county recorder this day of December, 1914.

PHIL HEROLD,

County Recorder of Santa Cruz County, State of Arizona.

[U. S. Int. Rev. Stamps 10¢. Canceled.]

State of Arizona,
County of Santa Cruz,—ss.

I, the undersigned, presiding Judge of the Superior Court of the State of Arizona, in and for the county of Santa Cruz, do hereby certify that the foregoing attestation is in due form and by the proper officer. [471]

In Witness Whereof, I have hereunto set my hand at Nogales, Santa Cruz County, Arizona, this 4th day of December, 1914.

W. A. O'CONNOR,

Presiding Judge of the Superior Court of the State of Arizona, in and for the County of Santa Cruz.

[U. S. Ins. Rev. Stamps 10¢. Cancelled.] [472]

State of Arizona,
County of Santa Cruz,—ss.

I, the undersigned, clerk of the Superior Court of the State of Arizona, in and for the county of Santa Cruz, do hereby certify that the Hon. W. A. O'Connor is the presiding Judge of the said Superior Court aforesaid, and is duly commissioned and qualified as such.

In Witness Whereof I have hereunto placed my hand and the seal of the said Superior Court aforesaid, this 4th day of December, 1914.

[Seal]

EDW. L. MIX,

Clerk of the Superior Court of the State of Arizona,
in and for the County of Pima.

[U. S. Ins. Rev. Stamps 10¢. Cancelled.] [472]

[Order Approving Statement of Evidence, etc.]

District of Arizona,
County of Pima,—ss.

The foregoing statement of the evidence and proceedings in the above-entitled case having heretofore, and on the 9th day of November, 1915, been lodged in the office of the clerk of this court by appellants Joseph E. Wise and Lucia J. Wise, for the examination of the other parties, and all the other parties hereto, or their respective solicitors, having been duly notified by the said Joseph E. Wise and Lucia J. Wise of the time and place when said appellants Wise would ask the Court or Judge to approve the said statement, the time so named in such notice being more than ten days after the service of said notice, as fully appears by the return of notice on file herein, and all objections and amendments proposed having been duly considered and the said statement, as hereinabove set forth, being found by the judge hereof to be true, complete and properly prepared, the same, on this 22d day of December, 1915, is hereby approved, and the same shall be filed in the office of the clerk of this court and become a part of the record in this case, for the purposes of the appeal.

WM. H. SAWTELLE,

Judge. [473]

Decree.

Filed and entered November 1, 1915.

This cause came on to be further heard at this term on the bill, answers, answers in the nature of cross-bills, replies, replications, and proofs, for the quieting of title and removal of cloud, and as argued by counsel, and thereupon, upon consideration thereof, it is by the Court.

ORDERED, ADJUDGED AND DECREED, as follows:

First. That the absolute title in fee simple to all that certain tract or parcel of land situate, lying and being in the county of Santa Cruz (formerly county of Pima) State of Arizona, and particularly described as follows:

Commencing at a point one mile and a half from the base of the Salero Mountain in a direction north forty-five degrees east of the highest point of said mountain, running thence from said beginning point west twelve miles, thirty-six chains and forty-four links; thence south twelve miles, thirty-six chains, forty-four links; thence east twelve miles, thirty-six chains and forty-four links; and thence north twelve miles, thirty-six chains and forty-four links to the place of beginning; according to the survey of Philip Contzen filed in the office of the Surveyor General of Arizona and in the offices of the Register and Receiver of the General Land Office for Arizona on or about December 14, 1914; said tract of land being known as Baca Float No. 3, and

being the third of the series of locations made on behalf of the heirs of Luis Maria Baca under the provisions of the Sixth Section of the act of Congress of June 21, 1860 (12 U. S. Stat. 71).

was, at the time of the commencement of this action and still is, vested and is hereby quieted in the plaintiffs to the extent of an undivided eighteen-nineteenths of the south half, and in the defendant, Jennie N. Bouldin, to the extent of an undivided eighteen thirty-eighths of the north half, and in the defendant, David W. Bouldin, to the extent of an undivided eighteen seventy-sixths of the north half, and in the defendant Helen Lee Bouldin, to the extent of an undivided eighteen seventy-sixths of the north half, and in the defendant, Joseph [474] E. Wise, to the extent of an undivided one thirty-eighth of the whole, and in the defendant, Margaret W. Wise, to the extent of an undivided one thirty-eighth of the whole of said tract.

Second. That the respective titles of the plaintiffs and of the defendants, Jennie N. Bouldin, David W. Bouldin, Helen Lee Bouldin, Joseph E. Wise and Margaret W. Wise, as above adjudicated, be and the same hereby are severally quieted in them severally against the respective claims of the respective parties to this action.

Third. That none of the defendants, Santa Cruz Development Company, Lucia J. Wise, Jesse H. Wise, M. I. Carpenter, Patrick C. Ireland, Ireland Graves, Anna R. Wilcox, Eldredge I. Hurt or W. G. Rifenburg has any right, title, interest, claim or demand in or to, or incumbrance upon, the tract or

parcel of land hereinbefore particularly described, or any part or portion thereof.

Fourth. That each of the parties to this action, and all persons claiming under them or any of them, be forever barred from and estopped against asserting any right, title or interest in or incumbrances upon said tract or parcel of land or any part or portion thereof adverse to any of the titles as hereinbefore adjudicated.

Fifth. That the various recorded instruments purporting to inure to the benefit of any of the parties to this action against, or in hostility to, or as an encumbrance upon, any of the titles as hereinbefore adjudicated, be and the same hereby are severally removed as clouds upon the respective titles as hereinbefore adjudicated.

Sixth. That until the said tract or parcel of land was segregated from the public domain of the United States on or about December 14, 1914, no adverse possession or statutory [475] prescription could commence or be initiated by any party to this action.

Seventh. That the temporary injunction, heretofore granted against Joseph E. Wise, as modified, is hereby made permanent as to the south one-half of the tract or parcel of land hereinbefore described; and dissolved as to the north half thereof.

Eighth. That a certified copy of this decree be filed and recorded in the office of the recorder of Santa Cruz County, State of Arizona.

Ninth. That the plaintiffs have judgment for their costs as taxable disbursements against the defendant Santa Cruz Development Company in the

sum of one hundred fifty dollars (\$150), and against the defendants Jennie N. Bouldin, David W. Bouldin, Helen Lee Bouldin, in the sum of one hundred dollars (\$100), and against the defendants Joseph E. Wise and Lucia J. Wise in the sum of one hundred dollars (\$100); and that the plaintiffs recover their costs against Joseph E. Wise in the sum of forty and seventy-seven hundredths \$(40.77) dollars, in the injunction proceedings.

Tenth. That any party to the action may apply at the foot of this decree for such other and further relief as may be proper.

WILLIAM H. SAWTELLE,
District Judge. [476]

**Minute Entries of the Court, of Date November 1,
1915, Relative to Notice and Allowance of the
Appeals of the Respective Parties.**

Now comes the above-named plaintiffs, Cornelius C. Watts and Dabney C. T. Davis, Jr., into open court at the time of the rendition and signing of the decree in the above-entitled case, and feeling themselves aggrieved by that portion of said decree that recognizes the title of the defendants Joseph E. Wise and Margaret W. Wise, to an undivided one thirty-eighth each of the tract or parcel of land, the title to which is sought to be quieted in said action in the plaintiffs, and also that portion of said decree which does not recognize and quiet the title of the plaintiffs in and to the whole of the south half of said tract or parcel of land, and the failure and refusal of said Court in not recognizing and quieting the appeal from such portions of said decree

to the Circuit Court of Appeals for the Ninth Circuit, and they pray that this their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said portions of said decree was made, duly authenticated, may be sent to the Circuit Court of Appeals. And now, to wit, on November 1, 1915, it is ordered that the appeal be allowed, as prayed for, and that the bond of said plaintiffs on appeal be fixed at the sum of One Thousand Dollars (\$1,000). . . .

Now come the above-named defendants James E. Bouldin, Jennie N. Bouldin, David W. Bouldin and Helen Lee Bouldin in open court, at the time of the rendition and signing of the decree in the above-entitled cause, and conceiving themselves aggrieved by that portion of said decree that recognizes the title of the defendants Joseph E. Wise and Margaret W. Wise to [477] an undivided one thirty-eighth each of the tract or parcel of land, the title to which is sought to be quieted in said action, and also that portion of said decree which does not recognize and quiet the title of the said defendants in and to the whole of the north half of said tract or parcel of land, and the failure of said Court in not recognizing and quieting the whole of said north half of said tract of land in the said defendants, do hereby appeal from such portions of said decree to the Circuit Court of Appeals for the Ninth Circuit, and they pray that this appeal may be allowed and that a transcript of the record and proceedings and papers upon which said portions of said decree were made, duly authenticated, may

be sent to said Circuit Court of Appeals. And now, to wit, on November 1st, 1915, it is ordered that the appeal be allowed, as prayed for, and that the bond of said defendants on appeal be fixed at the sum of One Thousand Dollars (\$1,000). . . .

Upon the rendering of the decree herein on this date, the defendants Joseph E. Wise and Lucia J. Wise, by Selim M. Franklin, Esquire, their solicitor and attorney, gave notice in open court, of their appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the said judgment and decree of this Court and at the same time did file herein their assignments of error.

The Court did then order that the bond on appeal of said appellants be fixed at the sum of One Thousand Dollars (\$1,000). The said appellants Joseph E. Wise and Lucia J. Wise did thereupon file their bond on appeal, in accordance with said order, which bond was thereupon approved by the Judge of this Court.

Thereupon the Court ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the [478] decree this day rendered herein, be, and the same is hereby allowed to the said defendants Joseph E. Wise and Lucia J. Wise, and that a certified transcript be transmitted to said United States Circuit Court of Appeals for the Ninth Circuit, as provided by law, and the rules of said Court.

Thereupon the defendants (intervenors) M. I. Carpenter, Patrick C. Ireland, Ireland Graves, Anna R. Wilcox, and Eldredge I. Hurt, by John D.

MacKay, Esquire, their solicitor and counsel, gave notice in open court that they, and each of them, joined in the said appeal of said defendants Joseph E. Wise and Lucia J. Wise, and said joinder was allowed by the Court.

And thereupon the defendants Jesse H. Wise and Margaret W. Wise, by James R. Dunseath, Esquire, their solicitor and attorney, gave notice in open court that they did not join in said appeal, or in any appeal whatsoever, and that they did not intend to appeal from the decree herein, as said decree was in their favor for all the relief they had asked for in their pleadings. . . .

The above-named defendant Santa Cruz Development Company conceiving itself aggrieved by the decree entered herein, in open court, this first day of November, 1915, appears by its solicitor in open court at the time of the signing and rendition of said decree and gives notice of appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit and asks for fourteen days' time within which to present its assignment of errors and same is allowed by the Court as prayed for. [479]

*In the United States District Court for the District
of Arizona.*

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY,
JAMES E. BOULDIN, JENNIE N. BOUL-

DIN, JOSEPH E. WISE, LUCIA J. WISE,
MARGARET W. WISE, JESSE H. WISE,
DAVID W. BOULDIN, HELEN LEE
BOULDIN, M. I. CARPENTER, PAT-
RICK C. IRELAND, IRELAND GRAVES,
ANNA R. WILCOX, ELDREDGE I.
HURT and W. G. RIFENBURG,

Defendants.

**Assignments of Error of Joseph E. Wise and Lucia
J. Wise.**

And now, on this 1st day of November, A. D. 1915, come the defendants Joseph E. Wise and Lucia J. Wise, by their solicitor Selim M. Franklin, Esquire, and say that the judgment and decree entered in the above cause on the first day of November, 1915, is erroneous and unjust to said defendants Joseph E. Wise and Lucia J. Wise, and to the defendants M. I. Carpenter, Patrick C. Ireland, Ireland Graves, Anna R. Wilcox and Eldredge I. Hurt, and that in the record and proceedings in said cause there is manifest error committed by the United States District Court, in and for the District of Arizona, in this:

I.

That said Court erred in adjudging and decreeing that the plaintiffs Cornelius C. Watts and Dabney C. T. Davis, Jr., [480] were at the commencement of this action and still are vested with absolute title in fee simple to an undivided eighteen-nineteenths (18/19) interest in the south half (1/2) of the tract or parcel of land in said judgment and decree described, and in quieting their title thereto;

and said judgment and decree in that regard is contrary to the evidence in this case, for each and all of the following reasons:

1. That the evidence in this case conclusively shows and proves that said plaintiffs did not own in fee simple, and never did own in fee simple, or otherwise, an undivided 18/19 interest in the said south half of said lands and premises, or an undivided 18/19 interest in any part thereof.

2. That the evidence in this case conclusively shows and proves that said plaintiffs, and each of them, claim and deraign their title in and to the said tract or parcel of land, and to the south half thereof, under and by virtue of a certain deed, dated on the 8th day of February, 1907, executed to them by S. A. M. Syme and the devisees of Alexander F. Mathews, deceased, and the executors of the will of said Alexander F. Mathews, deceased, and the evidence further shows that neither the said S. A. M. Syme or the said devisees or executors, or the said Alexander F. Mathews, deceased, in his lifetime, ever owned or was seized in fee of an undivided 18/19 interest in the said tract or parcel of land, or the south half of said tract or parcel of land, or any part thereof.

3. That the evidence in this case conclusively shows and proves that the said S. A. M. Syme deraigned and claimed his title to said tract of land under and by virtue of a certain deed executed to him by John C. Robinson, of date the 30th day of April, 1896, and that the said deed to said Syme does not convey, or purport to convey unto him the

said south half of said lands and premises, or any part thereof, [481] or any interest therein, and that the said Syme did not have any right, title or interest whatsoever in or to said south half of said tract or parcel of land, or in or to any part thereof, at the time he executed his deed of date February 8, 1907, or at any other time.

4. That the evidence in this case conclusively shows and proves that Alexander F. Mathews in his lifetime, and his devisees and executors after his death, deraigned and claimed their title to said tract or parcel of land under and by virtue of the following deeds which were executed to said Alexander F. Mathews in his lifetime, to wit:

- (1) Deed from John C. Robinson to Alexander F. Mathews, dated September 22, 1893.
- (2) Deed from John W. Cameron and Mrs. A. T. Belknap to Alexander F. Mathews, dated September 22, 1893.
- (3) Deed from John W. Cameron to Alexander F. Mathews, dated September 25, 1893.
- (4) Deed from James Eldridge to Alexander F. Mathews, dated September 22, 1893.
- (5) Deed from Charles A. Eldredge to Alexander F. Mathews, dated December 22, 1893.
- (6) Deed from Powhatan Bouldin and wife and James E. Bouldin to Alexander F. Mathews, dated February 7, 1894.
- (7) Deed from John Ireland and Wilbur H. King to Alexander F. Mathews, dated February 23, 1894.

And the evidence in this case further conclusively

shows and proves that none of the grantors in said last-mentioned deeds, or any of them, owned or was seized in fee of an undivided 18/19 interest, or any other interest, in or to the said south half of said tract or parcel of land, at the time of the execution of their respective deeds; and each and all of the said deeds above enumerated, under which the said plaintiffs claim and deraign their title, do not and did not [482] convey, or purport to convey, to the respective grantees therein mentioned, the whole or any part of, or any interest in or to, the said south half of the lands and premises described in the judgment and decree herein, but purported to describe, and did describe, an entirely different piece, tract or parcel of land; therefore the said District Court erred in adjudging and decreeing that plaintiffs were the owners in fee simple of an undivided 18/19 interest or any interest whatsoever, in the south half of said tract or parcel of land described in said judgment and decree, and in quieting their title thereto.

5. That the evidence in this case further conclusively shows and proves that each and all of the grantors and mesne grantors under whom the plaintiffs claim or deraign their title to the south half of the tract or parcel of land mentioned and described in the judgment and decree herein, or to any part thereof, or to any interest therein, (except John Ireland and Wilbur H. King, who executed the deed of February 23, 1894, hereinbefore enumerated,) deraigned and claimed their title under John C. Robinson; that the said John C. Robinson did not own in fee simple, and never did own in fee simple or other-

wise, an undivided 18/19 interest, or any interest whatsoever, in or to the south half of the tract or parcel of land described in said decree, or to any part thereof; that the said John C. Robinson did not convey, or purport to convey, by any of the deeds executed by him, the south half or any part of the tract or parcel of land described in the judgment and decree herein; but purported to convey and did convey an entirely different tract of land, as clearly appears from the description in each and all of said deeds.

6. That the evidence in this case conclusively shows and proves that the said John Ireland and Wilbur H. King [483] on the 23rd day of February, 1894, the date when they executed to Alexander F. Mathews their deed hereinbefore referred to, did own in fee simple a small undivided interest in the tract or parcel of land described in the judgment and decree herein; but the deed so executed by them aforesaid, did not quitclaim or convey, or purport to quitclaim or convey, the south half, or any interest whatsoever in the south half of the tract, or parcel of land described in the judgment and decree herein, but did describe and purport to describe, and did convey and purport to convey, an entirely different tract or parcel of land.

7. That the evidence in this case conclusively shows and proves that the said John C. Robinson, under whom the plaintiffs deraign all of their title (except the interest they claim by mesne conveyances under the deed from Ireland and King aforesaid) deraigned his title under and by virtue of a certain

deed executed to him by Christopher E. Hawley, of date May 5, 1884; and that the said Christopher E. Hawley deraigned and claimed his title under and by virtue of a certain deed of quitclaim, dated January 8, 1870, executed to him by John S. Watts, and that the tract or parcel of land described in said quitclaim deed of John S. Watts to Christopher E. Hawley did not describe, or purport to describe, the tract or parcel of land described in the decree herein, but an entirely different tract or parcel of land, and the said John S. Watts did not, under and by virtue of said deed, remise, release and quitclaim, or in any manner convey to said Christopher E. Hawley, the parcel or tract of land described in the judgment and decree herein, or any part thereof or any interest therein. [484]

II.

That the Court erred in adjudging and decreeing that the absolute title in fee simple to the north half of that certain tract or parcel of land described in said judgment and decree was, at the time of the commencement of this action and still is, vested to the extent of an undivided 18/38 interest in Jennie N. Bouldin; and 18/76 interest in David W. Bouldin, and an 18/76 interest in Helen Lee Bouldin, and in adjudging that any of said Bouldins had any interest whatsoever in said tract of land or any part thereof, and in quieting their title thereto, and said judgment and decree in that regard is contrary to the evidence in this case, for each and all of the following reasons:

1. That the evidence in this case conclusively

shows and proves that the said Bouldins did not own in fee simple, and that none of them did ever own in fee simple or otherwise, any interest whatsoever in the said north half of said tract or parcel of land, or any part thereof.

2. That the evidence in this case conclusively shows and proves that the said Bouldins above named, claim and deraign their title to the north half of the tract or parcel of land aforesaid, under and by virtue of certain deeds and mesne conveyances from Powhatan Bouldin and James E. Bouldin, and that the said Powhatan Bouldin and James E. Bouldin claimed and deraigned their title to said north half of said tract or parcel of land under and by virtue of a certain deed dated November 19, 1892, executed to them by John C. Robinson; that the said deed so executed by said Robinson to the said Powhatan and James E. Bouldin, did not convey, or purport to convey to the said grantees the north half of said tract or parcel of land described in the judgment and decree herein, or any part thereof; but did convey and purport to convey, and did describe an entirely different piece, parcel or tract of land, and [485] that the said John C. Robinson himself, did not own in fee, or otherwise, at the date he executed his deed aforesaid, to said Powhatan and James E. Bouldin, or at any other time whatsoever, the north half of the lands and premises described in the judgment and decree, or any part or parcel thereof.

III.

That the Court erred in adjudging and decreeing that the absolute title in fee simple was, at the com-

mencement of this action, and still is, vested to the extent of an 18/19 interest in plaintiffs as to the south half, and 18/19 interest in said Bouldins as to the north half, of the lands and premises described in the judgment and decree herein, and in quieting their respective titles thereto, for the following reasons:

1. That the evidence in this case conclusively shows and proves that plaintiffs and said defendants Bouldins claim and deraign whatever title they have under and by virtue of mesne conveyances from Christopher E. Hawley, and that the said Christopher E. Hawley deraigns his title thereto under that certain quitclaim deed of date January 8, 1870, executed by John S. Watts to said Hawley, as aforesaid; and that the said John S. Watts did not, at the date of his deed aforesaid, to said Hawley, own in fee simple or otherwise, an undivided 18/19 interest in the tract or parcel of land described in said judgment and decree, and therefore, the said Christopher E. Hawley did not acquire under the said quitclaim deed from John S. Watts, or in any other manner, or by any other deed, an undivided 18/19 interest in the said tract of land described in the decree, or an 18/19 interest in or to any part thereof.

2. That the evidence in this case conclusively shows and proves that Luis Maria Baca had nineteen children who were his heirs, and that the tract of land described in the decree [486] herein was granted by the Government of the United States to all the heirs of said Baca; that on the 8th day of January, 1870, when said John S. Watts, executed

his quitclaim deed to said Hawley, the said Watts had acquired the interest of thirteen of the said heirs of said Baca, and no more, and on said day when said Watts executed said deed to Hawley, the said Watts owned an undivided 13/19 interest and no more, in the said tract of land described in the decree herein, and which tract of land had been so granted by the Act of Congress of the United States to the heirs of said Baca; therefore, the said Hawley did not and could not acquire from said Watts under the deed of said Watts aforesaid, more than an undivided 13/19 interest in the said tract of land described in the decree, even if that particular tract of land had been described in the deed which said Watts executed to Hawley; and therefore, said Hawley, in no event, ever became the owner in fee simple or otherwise, of more than an undivided 13/19 interest in the lands remised, released and quitclaimed to him by the said deed of Watts, and in no event did or could the plaintiffs, or any or all of the said Bouldins who deraign their title under said Hawley as aforesaid, acquire more than an undivided 13/19 interest in the tract or parcel of land described in the decree; and the decree of said District Court, adjudging that plaintiffs were or are the owners in fee of an undivided 18/19 interest in the south half, and said defendants Bouldin are the owners in fee of an undivided 18/19 interest in the north half of the tract or parcel of land described in the decree, is contrary to the evidence in this case. [487]

IV.

The Court erred in overruling the objection of

the defendants Joseph E. Wise and Lucia J. Wise to the offer and introduction by the plaintiffs of the deed executed to John S. Watts, by certain of the heirs of Luis Maria Baca, insofar as said deed pretended to be executed or to be a deed of conveyance of the following heirs of said Luis Maria Baca, to wit: (1) Felipe Baca, (2) Domingo Baca, (3) Jesus Baca y Lucero 1st, (4) Jesus Baca y Lucero 2d, (5) Josefa Baca y Sanchez, for the reason (1) That the said deed upon its face, does not purport to be the deed of said Felipe Baca; that name is not mentioned as a grantor in the body of the deed; (2) That said deed is signed "Domingo Baca," but the body of the deed recites that Franco Baca is the purchaser of the interest of Domingo Baca, and the face of the deed shows that said Domingo Baca, when he signed the deed, had parted with his interest in the lands conveyed; and said deed is not signed by Franco Baca, his grantee; (3) The deed is signed also Jesus Ma. Baca, purchaser of the interest of Jesus Baca y Lucero. Now the deed in the body of it recites that Jesus Maria Cabeza de Baca is the owner by purchase of the interest of Jesus Baca y Lucero the first. It is signed by him as the purchaser of the interest of Lucero the Second, but there were two of those Luceros, the first and the second. Therefore, being the purchaser of the interest of Jesus Baca y Lucero the second it does not convey the interest of himself as the purchaser of Lucero the First. (4) The deed is also signed "Tomas C. Baca, attorney in fact for the heirs of Jesus Baca y Lueero the First." In the body of the deed Jesus

Baca y Lucero the First is not recited as a party; his heirs are not recited as parties. Tomas C. Baca is not recited as their attorney in fact. In other words, in the body of the deed Jesus Baca y Lucero the First is not a party to it by himself or his heirs or attorney in fact, or at all. Therefore, as to him the deed is signed by one who [488] purports to be the attorney in fact of the heirs of Jesus Baca y Lucero the first, and the heirs of Jesus Baca Lucero the first do not pretend to be parties to the instrument at all. (5) The deed is also signed "Tomas C. Baca, attorney for the heirs of Josefa Baca y Sanchez." Now the deed recites that Josefa Baca y Sanchez is a party of the first part—a grantor. The deed recites that Josefa Baca y Sanchez conveys but the deed is not signed by her; it is not signed by her attorney in fact. But it is signed by Tomas C. Baca as attorney in fact for her heirs, and of course, does not convey any of her interest.

V.

The Court erred, after it had admitted in evidence, subject to the objections of plaintiffs, a duly exemplified copy of the record of a deed executed by John Watts, in his own proper person and as the attorney in fact for his brother J. Howe Watts, and the other grantors, dated September 30, 1884, said deed being executed to David W. Bouldin, and conveying to him an undivided two-thirds interest in the lands in dispute in this action, said exemplified copy being "Defendants Wise Exhibit 16" and "Defendants Wise Exhibit 17," in sustaining the said objection for the reason that said exemplified copies

of the record of said deed had been theretofore duly admitted in evidence; the same were material in the deraignment of title of the said Joseph E. Wise, and were proper and competent evidence in said case.

VI.

That the Court erred in sustaining the objections of counsel for plaintiffs to the introduction in evidence by the defendant Joseph E. Wise, of a duly authenticated copy of the record of a deed dated September 30th, 1884, executed by John Watts in his own proper person, and by Elizabeth A. Watts, widow of John S. Watts, [489] and J. Howe Watts and other heirs of John S. Watts, deceased, by said John Watts as their attorney in fact, wherein they did convey unto said Bouldin an undivided two-thirds interest of all their right, title and interest in the tract or parcel of land described in the decree herein, said instrument so offered, being marked in the record as "Defendant Joseph E. Wise Exhibit 16"; and said Court did also err in sustaining the objection of counsel for plaintiffs to the introduction in evidence by said defendant Wise of another duly authenticated copy of the record of said deed, being described in the record herein as "Defendant Joseph E. Wise Exhibit 17"; the objections of said plaintiffs to the introduction in evidence of each of said instruments being upon the ground that the same were, and each of them are, immaterial, in that, as they asserted, John S. Watts, under whom the said widow and heirs mentioned in said deed deraign title, had nothing to convey, had no right, title or interest in or to the property therein described,

neither said widow, nor any of said heirs executing said deed to Bouldin, had any right, title or interest in said lands or premises, and for that reason said Bouldin acquired nothing by said deed, and the same was inadmissible as against the plaintiffs; that the Court erred in its said ruling in sustaining the said objection for the reason that the said John S. Watts, at the time of his death, was seized in fee of the full title to all of the tract or parcel of land described in the decree herein, and his widow and heirs, who executed the deed aforesaid, to Bouldin, inherited all of said tract of land and premises from said John S. Watts, he having died intestate; and the said widow and heirs, at the time of the execution of said deed to said Bouldin, were the owners in fee of the full title to all of the tract or parcel of land described in the judgment and decree herein; that defendant Joseph E. Wise, and the defendants M. I. Carpenter, Patrick C. Ireland, Ireland Graves, Anna R. Wilcox, and Eldredge I. Hurt, deraign their title by certain mesne conveyances from the said David W. Bouldin and therefore, [490] the said deed so executed to said David W. Bouldin was material and competent and relevant evidence to the issues in this case; and each of the certified or duly authenticated copies thereof aforesaid, were admissible in evidence as part of the proof of the title of the said defendant Joseph E. Wise, to the tract or parcel of land in dispute in this action, and described in the judgment and decree herein.

VII.

That the Court erred in not permitting the said

Joseph E. Wise to introduce in evidence the said deed, or duly certified copies of the record of the said deed executed by the heirs and widow of John S. Watts to David W. Bouldin, for the reason that the original deed was duly executed, acknowledged and recorded by the persons, or their duly authorized attorney in fact, who purported so to execute the same, and the said deed did convey to, and did vest title in the grantee therein named, to wit, David W. Bouldin, an undivided two-thirds interest in the tract or parcel of land in dispute in this action, being the tract or parcel of land described in the judgment or decree herein; that the said grantors were, at the time of the execution of said deed, vested with the absolute title in fee simple, to all of the said tract or parcel of land in said judgment and decree described, and their said deed aforesaid did vest an undivided two-thirds interest in said tract or parcel of land in the said David W. Bouldin; and the defendants Joseph E. Wise, M. I. Carpenter, Patrick C. Ireland, Ireland Graves, Anna R. Wilcox and Eldredge I. Hurt, deraign their title by certain mesne conveyances, and by a certain proceedings in court, under the said David W. Bouldin.

VIII.

The Court erred in sustaining the objection of plaintiffs and defendants Bouldin to the introduction in evidence by the [491] defendant Joseph E. Wise of a duly exemplified and authenticated copy of the judgment, record and proceedings in that certain case or suit in the District Court of the First Judicial District of the Territory of Ari-

zona, in and for the county of Pima, entitled John Ireland and Wilbur H. King, plaintiffs, vs. David W. Bouldin, defendant, and thereafter being in the Superior Court of the State of Arizona, in and for the county of Pima, as successor of the said District Court, said exemplified copy so offered in evidence being marked, in the present case, "Defendant Wise Exhibit 19," which said judgment in said case amongst other things adjudged and decreed the foreclosure of an attachment lien upon all the right, title and interest which said David W. Bouldin had on the 14th day of March, 1893, in the tract or parcel of land in dispute in the present action, and directing a sale of the said lands by the sheriff of said Pima County, to satisfy said lien and to satisfy the judgment then rendered; and which said record and proceedings further showed, in pursuance of said judgment and decree, the sheriff of said Pima county did duly sell, under the order of said Court, all of the right, title and interest which the said David W. Bouldin had in said tract of land aforesaid, to Wilbur H. King, on or about the 31st day of July, 1895; that said King paid to the sheriff the amount of his bid and that a certificate of sale was duly issued to him by said sheriff; that no redemption was made from said sale; that thereafter, the said sale was duly confirmed and a deed directed to be executed by the court having jurisdiction in said case to Joseph E. Wise, as the successor in interest and grantee of said Wilbur H. King, and fully showing that all the right, title and interest which said David W. Bouldin had in the said tract of land was duly sold under an order

of sale or execution issued under said judgment to said Wilbur H. King, and that, as there was no redemption therefrom the court ordered a deed to be executed to Wise, as the assignee and grantee of said King. That the said evidence was material for the further reason that on [492] the said 14th day of March, 1893, when the writ of attachment in said suit was levied upon said tract of land, the said David W. Bouldin did own an undivided interest therein, equal to nearly two thirds thereof; and the said judgment, execution and all of the proceedings in said case were material for the further reason that upon the same was predicated the deed which the sheriff did execute in pursuance of the orders of said Court to the purchaser at said sale, and to his assignee and grantee; and that the said judgment was duly made and rendered by a court having jurisdiction of the subject matter and of the parties, and the sale made thereunder did vest in the said Joseph E. Wise, as the assignee and grantee of said King, the purchaser at said sale, all of the right, title and interest which the said David W. Bouldin had in the said tract of land on the day when said writ of attachment was levied, to wit, March 14, 1893.

Counsel for defendants Bouldin also objected to the introduction in evidence by Joseph E. Wise, of the said judgment, record and proceedings, on the ground that the Court rendering said judgment had no jurisdiction, and that the judgment was void, that the levy was void, and that the confirmation of the sale was void, and generally, that no right, title or interest was conveyed under the sale made by said sheriff, or under the deed executed under any

order of the Court, or by any sheriff, or other officer. These objections were also sustained by the Court, and the defendant Joseph E. Wise also assigns as error said ruling of the Court so sustaining said objections of counsel for defendants Bouldin, for the reason that the Court rendering said judgment had jurisdiction and the title conveyed by the sheriff was a good title and the said judgment, record and proceedings were competent and material evidence as hereinbefore more fully set forth.

The said record and proceedings were admitted in evidence subject to the objections of plaintiffs and defendants Bouldin, and [493] thereafter, and after defendant Joseph E. Wise had rested his case, the Court sustained the objections of plaintiffs and defendants Bouldin to the introduction in evidence of said record, proceedings and judgment, to which ruling of the Court due exception was taken.

IX.

The Court erred in sustaining the motion of plaintiffs to strike out all of the testimony of the defendant Joseph E. Wise as to his possession of any part of the tract or parcel of land in dispute, and particularly his testimony as to his adverse possession, and claim under adverse possession and prescription, to the following piece of land situate within the limits of the tract or parcel of land described in the decree, to wit, the east half ($\frac{1}{2}$) of the northwest quarter ($\frac{1}{4}$) and the west half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$) of section thirty-five (35), township twenty-two (22), south, range 13 east, Gila and Salt River Meridian, containing one hundred

and sixty (160) acres; also as to a certain tract containing five (5) acres, known as the Magee Millsite, for which United States patent as a millsit had been issued by the Government of the United States; the objection being upon the ground that the same was incompetent and immaterial because the Statute of Limitations of the State of Arizona, and heretofore Territory of Arizona, did not apply to said tract of land as the same had not been officially segregated from the public domain until December, 1913.

The testimony of said Wise was substantially that prior to 1907, when he obtained his first interest to the tract of land in dispute, under deed from Wilbur H. King, he had, for a period of more than ten years continuously prior to the year 1907, and at the time of his obtaining said deed from said King, been in the peaceable, adverse possession of the tract of land above described, containing 160 acres; that he had fenced the same up and [494] took possession thereof in 1889, and has been in possession ever since; that prior thereto he had made a homestead filing on said tract of land and in December, 1908, had made final proof on the same before the United States Land office, but nothing further had been done; that he claimed said tract of land adversely to everybody except the Government of the United States, and had possessed and was cultivating it from 1889 up to date; that he had been in possession of the said Magee patented millsit, containing five acres, and had fenced the same and been in such possession, claiming the same adversely, for more than

ten years prior to the year 1907, and ever since has claimed the same adversely and by virtue of peaceable possession thereof, and under a patent issued therefor by the Government of the United States; that the said patent covers the ruins of the Hacienda de Santa Rita, and that he had been in possession thereof ever since 1884.

That under said testimony the claims of plaintiffs, and all other parties to this action, as against said defendant Joseph E. Wise, were barred by the Statute of Limitations of the State of Arizona in regard to adverse possession, and the Court erred therefore, in striking out said testimony.

X.

The Court erred in sustaining the motion of the plaintiffs and of the defendants Bouldin, to strike out the testimony and admissions as to the testimony of the defendant Lucia J. Wise, the grounds of said motion being that said evidence was immaterial and that no title or rights by adverse possession alone could be obtained as against any of the parties hereto as to the tract of land aforesaid, until December, 1914.

The facts which *all* counsel in open court stipulated should be considered as the testimony of said Lucia J. Wise, were, that her mother Mary E. Sykes, in the year 1900 took possession of [495] that certain forty-acre tract of land described in the last amended answer herein, as the land claimed adversely by said Lucia J. Wise, and being within the limits of the tract of land described in the decree herein; that said Mary E. Sykes erected monuments

and lived thereon at a house thereon, and cultivated and used and claimed it continuously from the year 1900 until the date of her death, in the year 1913; that she had made an application for a homestead entry thereon, under the United States public land laws, in her lifetime, which was rejected; that defendant Lucia J. Wise is her daughter and the Executrix of the last will and testament of said Mary E. Sykes, and as such executrix and heir she took possession of the said tract of land upon the death of her mother, and ever since has lived upon the same and has claimed the same as such executrix and heir, and that at all times the said Mary E. Sykes in her lifetime, and the said Lucia J. Wise as heir and executrix since the death of said Mary E. Sykes, have been in the peaceable, adverse possession of said forty acres of land, using and cultivating the same, and claiming the same adversely to all persons except as against the United States.

The Court erred in sustaining said motion for the reason that, under the Statutes of the State of Arizona, the action of plaintiffs and all of the defendants, against the said Lucia J. Wise, to quiet title to the said forty acres, was barred, and the said Lucia J. Wise, as heir and executrix of her mother, had absolute title in fee to said forty acres of land by virtue of adverse possession and prescription under the Statutes of Arizona.

XI.

The Court erred in denying the motion of the defendants Joseph E. Wise and Lucia J. Wise to strike out Plaintiffs' Exhibits "U," "V," "W," "X,"

“Y,” “Z,” “AA,” “BB,” “CC,” “DD,” “EE”; said exhibits being the following deeds to wit: Deed from John C. Robinson to Alexander F. Mathews, dated September 22, 1893, being Plaintiffs’ Exhibit ‘U’; [496] Deed from John C. Robinson to S. A. M. Syme, dated April 30, 1896, being Plaintiffs’ Exhibit “V”; Deed from Syme and Mathews to Watts and David, Trustees, dated February 8, 1907, being Plaintiffs’ Exhibit “W”; Deed from Powhatan Bouldin and wife and James E. Bouldin to John C. Robinson, dated November 12, 1892, being Plaintiffs’ Exhibit “X”; Deed from Wilbur H. King and John Ireland to Alexander F. Mathews, dated February 23, 1894, being Plaintiffs’ Exhibit “Y”; Deed from John W. Cameron and A. T. Belknap to Alexander F. Mathews, dated September 22, 1893, being Plaintiffs’ Exhibit “Z”; Deed from Cameron to Mathews, dated September 25, 1893, being Plaintiffs’ Exhibit “AA”; Deed from Charles A. Eldredge to Alexander F. Mathews, dated December 22, 1893, being Plaintiffs’ Exhibit “BB”; Deed from James Eldredge to Alexander F. Mathews, dated September 22, 1893, being Plaintiffs’ Exhibit “CC”; Declaration of Trust from Cameron to Robinson, et al., dated November 28, 1892, being Plaintiffs’ Exhibit “DD”; and Deed from Powhatan Bouldin and others to Mathews, dated February 7, 1894, and being Plaintiffs’ Exhibit “EE.” Said motion being made on the grounds that each and all of said deeds and instruments were irrelevant, immaterial and incompetent in that they describe a different tract of land than the tract of land in dispute in this case,

and did not tend to prove that plaintiffs have any title to the tract or parcel of land in dispute herein, for the reason that none of said deeds did purport to describe or convey the tract or parcel of land in dispute in this action, and described in the decree, or any part thereof, and are utterly immaterial.

XII.

The Court erred in overruling the objection of counsel for Joseph E. Wise and Lucia J. Wise, and counsel for the defendant Santa Cruz Development Company, to the introduction in evidence by the defendants Bouldin, of each and all of the following deeds and instruments in writing, to wit: [497]

1. Deed from Powhatan W. Bouldin to Dr. M. A. Taylor, dated November 7, 1884, being Defendants Bouldin Exhibit 1.
2. Sheriff's Certificate of Sale, Joseph B. Scott, Sheriff, to Lionel M. Jacobs, dated December 4, 1894, being Defendants Bouldin Exhibit 2.
3. Deed from Lionel M. Jacobs to M. A. Taylor, dated December 4, 1894, being Defendant Bouldins' Exhibit No. 3.
4. Deed from James E. Bouldin to M. A. Taylor, dated April 25, 1895, being Defendant Bouldins' Exhibit No. 4.
5. Deed from M. A. Taylor to Belle Bouldin, dated November 28, 1896, being Defendant Bouldins' Exhibit 5.
6. Deed from Daisy Belle Bouldin and James E. Bouldin to D. B. Gracy, dated April 16, 1900, being Defendant Bouldins' Exhibit 6.
7. Deed from D. B. Gracey to James E. Bouldin,

dated June 15, 1904, being Defendant Bouldins' Exhibit 7.

The introduction of which said deeds was objected to on the ground that the same were immaterial and did not cover the property in controversy, for the reason that none of said grantors or parties mentioned in the said deeds and certificate of sale had any interest whatsoever in the tract or parcel of land described in the decree, and none of the said deeds or said certificate of sale purported to convey the property in controversy, or the tract of land described in the decree, or any interest therein.

XIII.

The Court erred in permitting plaintiffs to introduce in evidence, over the objections of the defendants Wise and Santa Cruz Development Company, an instrument in writing executed by John S. Watts to Wm. Wrightson, dated March 2, 1863, and being Plaintiffs' Exhibit L, for the reason that the same was irrelevant, incompetent and immaterial; that plaintiffs deraign no title under said instrument; [498] and the said instrument could not be used to vary the description in the deed subsequently executed by said John S. Watts to Christopher E. Hawley and there was no evidence showing that Christopher Hawley claimed or deraigned any interest or title under the said title bond aforesaid.

XIV.

The Court erred in denying the motion of the defendant Joseph E. Wise, for leave to file a duly exemplified copy of the affidavit of Prudencio and of the affidavit of Luis A. C. Baca, signed by each of

them respectively, more than thirty years prior to the commencement of this case, and being about in the year 1879, the originals of which affidavits are on file as a part of the records of the District Court in and for the Territory of New Mexico; for the reason that the said affidavits are ancient documents, signed by the said Prudencio and the said Luis A. C. Baca; that each of them was dead at the time the suit was commenced; that said Prudencio Baca was a son of Luis Maria Baca, and the said affidavit signed by him was a statement of all of the children of his father, Luis Maria Baca, and of the descendants of such children; and that said affidavit showed that Antonio Baca was the son of Luis Maria Baca; that said Antonio Baca died leaving a son by the name of Manuel Baca; that he died leaving two children, to wit, a son, Jose Baca, and a daughter, Prudencio Baca; that the evidence in this case discloses that neither Joseph E. Wise nor his counsel, knew of the existence of the said affidavits, so signed by Prudencio Baca and Luis A. C. Baca, when this case was tried; but the record further discloses that counsel for plaintiffs had in their possession a duly certified copy of such affidavit signed by Prudencio Baca, and when, during the trial of this case, they were requested to produce the same by the counsel for Joseph E. Wise, they refused to do so, and the said Joseph E. Wise, since the trial but [499] before entry of judgment in this case, did himself obtain from the District Court of New Mexico a certified copy of the said affidavit and did present the same to the lower court, with his motion

to file the same as evidence in this case, and that the lower court erred in refusing his motion allowing him to file the same as an exhibit and evidence in this case.

XV.

The Court erred in overruling the objection of the defendants Joseph E. Wise and Lucia J. Wise to the introduction in evidence by the defendant Santa Cruz Development Company of a certified copy of the petition of John S. Watts, attorney for petitioners, to the Surveyor General of New Mexico, praying for the confirmation of the Las Vegas Grandes Land Grant under the Act of Congress of July 22, 1854, being Defendant Santa Cruz Development Company's Exhibit 1, for the reason that the same was utterly irrelevant, incompetent and immaterial for any purpose whatsoever.

XVI.

The Court erred in overruling the objection of the defendants Joseph E. Wise and Lucia J. Wise to the introduction in evidence by Santa Cruz Development Company of a duly exemplified copy of the affidavits of Jose Francisco Salas, Manuel Antonio Baca, Jose Maria Montoya and Remijio Rivera, being defendant Santa Cruz Development Company's Exhibit 2, for the reason that the same were utterly incompetent, irrelevant and immaterial. Said affidavits taken before the Surveyor General of New Mexico, were offered for the purpose of proving who the heirs of Luis Maria Baca were, and were utterly immaterial and incompetent for that purpose or any other purpose.

XVII.

The Court erred in refusing the defendant Joseph E. Wise [500] to introduce in evidence and to file as part of the evidence in this case a duly authenticated copy of the judgment of the District Court of the county of Bernalillo, Territory of New Mexico, in the case of Jose L. Berea, et al., vs. Louis Sulzbacher, et al., and the report of the referee, referred to in said judgment, wherein that Court found and decreed that the said Antonio Baca, also known as Jose Antonio C. de Baca, was a son of the said Luis Maria Baca.

XVIII.

The Court erred in not permitting the defendant Joseph E. Wise to introduce in evidence and to file as part of the evidence in this case a duly authenticated copy of the affidavit signed and sworn to on November 10, 1879, by Prudencio C. de Baca, a son of Luis Maria Baca, which contained a full statement of all the children of said Luis Maria Baca and their descendants, including the said Antonio Baca and his descendants, under whom Joseph E. Wise claims title; said affidavit being an ancient document and being competent evidence on the subject of pedigree of said Antonio Baca and his descendants.

XIX.

The Court erred in not permitting the defendant Joseph E. Wise to introduce in evidence and to file as part of the evidence in this case a duly exemplified copy of an affidavit signed and sworn to on October 12, 1877, by Luis A. C. de Baca, a grandson of

Luis Maria Baca, and filed as a part of the record in the District Court of New Mexico, for Bernalillo County, in the case of Perea vs. Sulzbacher, and which affidavit set forth all of the children of said Luis Maria Baca, and all their descendants, and which affidavit showed that Antonio Baca, also known as Jose Antonio C. de Baca, under whose descendants defendant Joseph E. Wise in part deaigns title, was a son of said Luis Maria Baca.

[501]

XX.

The Court erred in adjudging and decreeing that until the tract or parcel of land described in said judgment and decree was segregated from the public domain of the United States, on or about the 14th day of December, 1914, no adverse possession or statutory prescription could commence to be initiated by any party to this action, for the reason that the Supreme Court of the United States has heretofore held that the title in fee to said tract of land was vested in the heirs of Luis Maria Baca in the year 1863; and as the title had vested in said heirs at said time, the said tract of land was subject to the laws of the Territory of Arizona and State of Arizona, in regard to adverse possession and in regard to title by prescription; and the action of the Court in striking out all of the testimony of Joseph E. Wise and the admissions as to the testimony of Lucia J. Wise as to adverse possession, was erroneous.

XXI.

The Court erred in adjudging and decreeing that

the defendant Joseph E. Wise was vested with an absolute fee simple title to no greater interest than an undivided 1/38 interest in the tract or parcel of land described in the decree; for the reason that under the evidence in this case, John S. Watts, at the time of his death, was seized in fee of an undivided 18/19 interest in the said tract or parcel of land; that he died intestate in the year 1876, leaving a widow and heirs of age; that his said widow and heirs, upon his death, became seized in fee of the undivided 18/19 interest aforesaid; that the said widow and heirs did, by their deed, duly executed and dated the 30th day of September, 1884, being Defendants Wise Exhibits 16 and 17, convey to David W. Bouldin, an undivided 2/3 of their undivided 18/19 interest in said tract of land; and that the defendants Wise, under and by virtue of the sheriff's sale made under the judgment and decree of the District [502] Court of the Territory of Arizona, in and for the county of Pima, hereinbefore referred to, and the sheriff's deed executed under said sale, and all proceedings, as hereinbefore set forth, has become and is the owner in fee of all of the right, title and interest so acquired by the said David W. Bouldin under the deed from said widow and heirs aforesaid, except the undivided 1/9 of the said interest acquired by said Bouldins from said heirs of Watts, and which said undivided 1/9 of the interest of said Bouldins, said Bouldins conveyed to John Ireland and Wilbur H. King, as hereinbefore set forth, and that the said Joseph E. Wise is the owner of the said interest so conveyed by Bouldin to said

John Ireland and said Wilbur H. King, under and by virtue of deeds of conveyance from the said Wilbur H. King and from the widow of said John Ireland, he being deceased; therefore, the said defendant Joseph E. Wise, in addition to the said undivided 1/38 interest, is the owner in fee of an undivided $\frac{2}{3}$ of an undivided 18/19 interest in and to said tract of land, and the said Court erred in not rendering its judgment and decree for the defendant Joseph E. Wise as to the said undivided $\frac{2}{3}$ of said 18/19 interest in addition to the said undivided 1/38 interest, and in not adjudging and decreeing that there was vested in said Joseph E. Wise, in addition to the said 1/38 interest mentioned in said decree, a further interest, equal to $\frac{2}{3}$ of an undivided 18/19 interest in the said tract or parcel of land, and in not quieting his title thereto.

XXII.

The Court erred in rendering its judgment and decree that the various recorded instruments, purporting to inure to the benefit of the said plaintiffs, or to the benefit of the said defendants Bouldin, or purporting to be in hostility to the title adjudicated in said decree in favor of the said plaintiffs, and of the said defendants Bouldin, or any or either of them, be removed [503] as clouds; and in removing the same as clouds upon the titles adjudicated to said plaintiffs, and to the said defendants Bouldin, and to each of them; for the reason that neither the said plaintiffs, nor the said defendants Bouldin, or any or either of them, has any right, title or interest whatsoever in the tract or parcel of land de-

scribed in said decree, and none of the recorded instruments mentioned in said decree, or any instruments whatsoever, are clouds upon the title of said plaintiffs, and the said defendants Bouldin, or any of them, and for the same reason the Court erred in rendering its decree quieting the title of the plaintiffs to said tract of land, and the title of said Bouldins to said tract of land, or any part thereof, as neither said plaintiffs nor said Bouldins have any title whatsoever to said tract of land described in said decree, or in dispute in this action.

XXIII.

That the Court erred in said judgment and decree in ordering and adjudging "that the temporary injunction heretofore granted against Joseph E. Wise, as modified, be made permanent as to the south half of the tract or parcel of land in said judgment and decree described"; the said injunction as modified and so made permanent by said decree, enjoins and restrains the said Joseph E. Wise "from erecting and re-erecting fences in, upon or around Baca Float No. 3, or any portion thereof, which would prevent or obstruct the said plaintiffs or their tenants, from enjoying the use of said Float for grazing purposes, or which would prevent or obstruct free ingress or egress of the cattle of said plaintiffs, or their tenants, to and from the water or drinking places upon said Float, or prevent or obstruct the use of said water and land as heretofore used, etc." That said decree in said regard is erroneous for the following reasons:

1. That this is an action to quiet title and remove [504] clouds and not an action to restrain trespass,

or to determine any rights of possession of the respective parties to the action in the lands in dispute, and the decree of the Court, restraining the right to possession and enjoyment of defendant Joseph E. Wise to the south half, or any part of said lands, is erroneous.

2. That no issue in regard to trespass or rights of possession or fencing is made or raised by the pleadings and no such issues were in the case.

3. That there is no testimony or evidence in the case which proves or tends to prove, that said Wise had been, or was doing, any of the matters or things, or threatened to do any of the matters or things which the court has enjoined him from doing.

4. That the only object of the said injunction when first issued, was to preserve the property in *status quo* pending said action, and said object having been attained, it was the duty of the lower court to have dissolved the injunction and to have dismissed the same, upon rendering its decree, which decree does adjudge and find that Joseph E. Wise has an undivided interest in all of said tract of land.

5. That the judgment and decree of this court is that said defendant Joseph E. Wise is a tenant in common with the plaintiffs as to the south half of the tract of land aforesaid, and that his interest is undivided, and the injunction in said decree perpetually enjoins said Wise from the exercise of his rights and the use and enjoyment of said property as a tenant in common with plaintiffs, and is against the law and is not supported by any of the evidence in the case.

XXIV.

Each and all of the errors hereinabove assigned by the said defendant Joseph E. Wise as errors affecting him and his [505] interest and his rights, also equally affect the interest and rights of the defendants M. I. Carpenter, Patrick C. Ireland, Ireland Graves, Anna R. Wilcox and Eldredge I. Hurt, for the reason that said defendants deraign their title as heirs of John Ireland, deceased, and as such heirs claim an undivided half interest of all the right, title and interest which said John Ireland had in his lifetime; the other half interest having been conveyed by the widow of said John Ireland to said Joseph E. Wise, as hereinbefore set forth; and therefore, these defendants do now further assign as error each and all of the above assignments of error, as errors also affecting the said defendants, M. I. Carpenter, Patrick C. Ireland, Ireland Graves, Anna R. Wilcox and Eldredge I. Hurt. [506]

WHEREFORE, by reason of the errors aforesaid, said Joseph E. Wise and Lucia J. Wise pray that the judgment and decree rendered and entered in said action be avoided, annulled and reversed, and that said District Court of the United States, for the District of Arizona, be directed to enter judgment and decree, adjudging and decreeing the said Joseph E. Wise, to be the owner in fee absolute of an undivided seventy-three one hundred and fourteenth (73/114) interest in and to the tract or parcel of land described in said decree, and be further adjudged and decreed to be the owner in fee absolute of all of the said 160 acre tract of land described as

follows: "The east half ($\frac{1}{2}$) of the northwest quarter ($\frac{1}{4}$) and the west half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$) of section thirty-five (35), township twenty-two (22), south, Range 13 east, Gila & Salt River Meridian; and that his title to the said undivided interest, and to the said tract of land, be quieted as against the plaintiffs and all the other defendants in this action; that the said Lucia J. Wise be adjudged to be the owner in fee of the said forty (40) acres of land, described as follows: The northwest quarter ($\frac{1}{4}$) of the northwest quarter ($\frac{1}{4}$) of section one (1), township twenty-three (23) south of Range thirteen (13) east, Gila and Salt River Base and Meridian, and that her title thereto be quieted as against the plaintiffs, and all other parties to this action; that the heirs of John S. Watts and the defendant Santa Cruz Development Company, as mesne grantee under said heirs, be decreed to be the owners of an undivided thirty-six one hundred and fourteenth (36/114) interest in said land and premises, and that defendant Margaret W. Wise be adjudged to be the owner in fee of an undivided one-thirty-eighth (1/38), equal to an undivided three-one hundred and fourteenth (3/114) interest, in said lands and premises, and that the said defendants M. I. Carpenter, Patrick C. Ireland, Ireland Graves, Anna R. Wilcox, and Eldredge I. Hurt, as the heirs of John Ireland, be adjudged to be the owners in fee of an undivided two-one hundred [507] and fourteenth (2/114) interest in said tract or parcel of land described in the decree herein.

And that the plaintiffs Cornelius C. Watts and

Dabney C. T. Davis, Jr., and the defendants James E. Bouldin, Jennie N. Bouldin, David W. Bouldin and Helen Lee Bouldin, be adjudged and decreed to have no right, title or interest whatsoever in or to said tract or parcel of land.

SELIM M. FRANKLIN,
Attorney for Joseph E. and Lucia J. Wise defendants in the lower court.

Filed Nov. 1, 1915. [508]

[**Bond on Appeal of Joseph E. Wise and Lucia J. Wise.]**

*In the United States District Court, for the District
of Arizona.*

IN EQUITY—E-5 (TUCSON).

CORNELIUS C. WATTS, and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY,
JAMES E. BOULDIN, JENNIE N. BOULDIN,
JOSEPH E. WISE, LUCIA J. WISE,
MARGARET W. WISE, JESSE H. WISE,
DAVID W. BOULDIN, HELEN LEE
BOULDIN, M. I. CARPENTER, PATRICK
C. IRELAND, IRELAND GRAVES, ANNA
R. WILCOX, ELDREDGE I. HURT, and
W. G. RIFENBURG,

Defendants.

KNOW ALL MEN BY THESE PRESENTS:

That we, Joseph E. Wise and Lucia J. Wise as principals, and Chas. F. Solomon and B. M. Jacobs, both of Tucson, Arizona, as sureties, are held and firmly bound unto Cornelius C. Watts and Dabney C. T. Davis Jr., and unto James E. Bouldin, Jennie N. Bouldin, David W. Bouldin and Helen Lee Bouldin, in the sum of One Thousand Dollars, lawful money of the United States, to be paid to them, or either or any of them, and to his, her or their respective executors, admisntrators and successors; for which payment well and truly to be made we bind ourselves and each of us jointly and severally and each of our heirs, executors and administrators and successors by these presents. Sealed with our seals and dated this 1st day of November, 1915.

Conditioned, that Whereas, on the 1st day of November, A. D. 1915, in the District Court of the United States, for the District of Arizona, in the suit pending in that court, wherein the said Cornelius C. Watts and Dabney C. T. Davis, Jr., were plaintiffs and Santa Cruz Development Company, James E. Bouldin, Jennie N. Bouldin, Joseph E. Wise, Lucia J. Wise, [509] Margagret E. Wise, Jesse H. Wise, David W. Bouldin, Helen Lee Bouldin, M. I. Carpenter, Patrick C. Ireland, Ireland Graves, Anna R. Wilcox, Eldredge I. Hurt and W. G. Rifenburg, were defendants, numbered on the equity docket as "In Equity E-5 (Tucson)" a judgment and decree was rendered against the said Joseph E. Wise and Lucia J. Wise, and the said Joseph E. Wise and Lucia J. Wise, having obtained an appeal

57B Joseph E. Wise and Lucia J. Wise vs.

therefrom to the United States Circuit Court of Appeals, for the Ninth Circuit:

NOW, THEREFORE, if the said Joseph E. Wise and Lucia J. Wise shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

JOSEPH E. WISE.

LUCIA J. WISE.

CHAS. F. SOLOMON.

B. M. JACOBS.

State of Arizona,

County of Pima,—ss.

Chas. F. Solomon and B. M. Jacobs the sureties in the foregoing bond, being duly sworn, each for himself does depose and say, that he is a resident and householder within the District of Arizona, and is worth the amount specified in the foregoing bond or undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution.

CHAS. F. SOLOMON,

B. M. JACOBS.

Subscribed and sworn to before me this first day of November, 1915.

My commission expires March 12, 1916.

[Seal]

ANTHONY COENEN,

Notary Public.

Approved November 1, 1915.

WM. H. SAWTELLE,

Judge. [510]

[Petition of Cornelius C. Watts and Dabney C. T. Davis, Jr., for Appeal and Order Allowing Appeal.]

In the District Court of the United States, in and for the District of Arizona.

IN EQUITY—E-5 (TUCSON).

CORNELIUS C. WATTS, and DABNEY C. T. DAVIS, Jr.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY,
JAMES E. BOULDIN, JENNIE N. BOULDIN, JOSEPH E. WISE, LUCIA J. WISE, MARGARET W. WISE, JESSE H. WISE, DAVID W. BOULDIN, HELEN LEE BOULDIN, M. I. CARPENTER, PATRICK C. IRELAND, IRELAND GRAVES, ANNA R. WILCOX, ELDREDGE I. HURT, and W. G. RIFENBURG,

Defendants.

Now come the above-named plaintiffs, Cornelius C. Watts and Dabney C. T. Davis, Jr., in open court at the time of the rendition and signing of the decree in the above-entitled case and conceiving themselves aggrieved by that portion of said decree that recognizes the title of the defendants, Joseph E. Wise and Margaret W. Wise, to an undivided one thirty-eighth each of the tract or parcel of land the title to which is sought to be quieted in said action in the plaintiffs, and also that portion of said decree which does not

recognize and quiet the title of the plaintiffs in and to the whole of the south one-half of said tract or parcel of land, and the failure and refusal of said Court in not recognizing and quieting the whole of said south one-half of said tract of land in the plaintiffs, do hereby appeal from such portions of said decree to the Circuit Court of Appeals for the Ninth Circuit and they pray that this their appeal may be allowed and that a transcript of the record and proceedings and papers upon which said portions of said decree was made, duly authenticated, may be sent to the Circuit Court of Appeals.

S. L. KINGAN,
Solicitor for Plaintiffs.

Dated Tucson, Arizona, Nov. 1, 1915.

And now, to wit, on Nov. 1, 1915, it is ordered that the appeal be allowed as prayed for.

WM. H. SAWTELLE,
Judge. [511]

*In the United States District Court for the District
of Arizona.*

IN EQUITY—E-5 (TUCSON).
CORNELIUS C. WATTS, and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY,
JAMES E. BOULDIN, JENNIE N. BOUL-
DIN, JOSEPH E. WISE, LUCIA J. WISE,
MARGARET W. WISE, JESSE H. WISE,

DAVID W. BOULDIN, HELEN LEE BOULDIN, M. I. CARPENTER, PATRICK C. IRELAND, IRELAND GRAVES, ANNA R. WILCOX, ELDREDGE I. HURT, and W. G. RIFENBURG,

Defendants.

Plaintiffs' Assignment of Errors.

Come now the plaintiffs, Cornelius C. Watts and Dabney C. T. Davis, Jr., and file the following assignment of errors, upon which they will rely upon their prosecution of appeal in the above-entitled cause from so much of the decree made by this Honorable Court on the first day of November, 1915, as adjudicates that Joseph E. and Margaret W. Wise are respectively the owners of an undivided one thirty-eighth interest and that plaintiffs are not the owners of the whole of the south one-half in Baca Float No. 3, being that certain tract of land situate in the county of Santa Cruz, State of Arizona, described as follows, to wit:

“Commencing at a point one mile and a half from the base of the Salero mountain in a direction north forty-five degrees east of the highest point of said mountain running thence from said beginning point west twelve miles, thirty-six chains and forty-four links; thence south twelve miles, thirty-six chains and forty-four links; thence east twelve miles, thirty-six chains and forty-four links; and thence north twelve miles, thirty-six chains and [512] forty-four links to the place of beginning; according to the survey of Philip Contzen filed in the

office of the Register and Receiver of the General Land Office for Arizona on or about December 14, 1914; said tract of land being known as Baca Float No. 3, and being third of the series of locations made on behalf of the heirs of Luis Maria Baca under the provisions of the sixth section of the act of Congress of June 21, 1860 (12 U. S. Stat. 71)."

1. The Court erred in adjudicating that, at the time of the commencement of the action, the title to the land described was and still is vested and hereby quieted in the defendant Joseph E. Wise to the extent of an undivided one-thirty-eighth of the whole, and in the defendant Margaret W. Wise to the extent of an undivided one thirty-eighth of the whole of said tract.

2. The Court erred in not adjudicating that the absolute fee simple title to the said land was, at the time of the commencement of the action, and still was, vested and was by the decree quieted in the plaintiffs to the south half of said tract and in the defendant Jennie N. Bouldin to an undivided one-half of the north half of said tract, and in the defendants David W. Bouldin and Helen Lee Bouldin respectively to an undivided one-fourth of the north half of said tract.

3. The Court erred in adjudicating that the respective titles of the defendants, Joseph E. Wise and Margaret W. Wise, as adjudicated in the decree be and the same thereby were severally quieted in them severally against the respective claims of the respective parties to the action.

4. The Court erred in not adjudicating that neither the defendant Joseph E. Wise or the defendant Margaret W. Wise had any right, title, interest, claim or demand in or to or incumbrance or lien upon the tract or parcel of land particularly described, or any part or portion thereof.

5. The Court erred in admitting in evidence a certain [513] deed executed by Juana L. Baca and others, and designated as Defendant Wise's Exhibit No. "8," the offer of which deed was made as follows:

"We will offer in evidence a deed dated the twentieth day of August, 1913, between Juana L. Baca, widow of Jose Baca, and Preciliana Baca and others, who are recited in the deed as the widow and children of Jose Baca, who is a son of Juan Manuel Baca, who was the son of Antonio Baca, the deed being made to Marcos C. de Baca."

Objection was made by the plaintiffs, Cornelius C. Watts and Dabney C. T. Davis to the introduction in evidence of said deed upon the ground that the defendant Joseph E. Wise claims under the deed of 1864 and the deed of 1871, made by the heirs of Luis Maria Cabeza de Baca to John S. Watts, and is bound by the recitals and covenants contained in said deeds to the effect that the grantors in said deeds were the owners in fee simple of the aforesaid property, Baca Float No. 3, and had full right to convey the same, and were all of the heirs of the said Luis Maria Cabeza de Baca.

Which objections were thereupon overruled by

the Court and the evidence admitted and exception duly taken.

In that the said Joseph E. Wise was claiming under the said deeds of 1864 and 1871, and the said plaintiffs were claiming under the same deeds, and that the defendant Wise was estopped by reason of said recitals and covenants, as against the said plaintiffs claiming under the same conveyance, to deny or controvert the said recitals and covenants, and for the further reason that there was no competent evidence that the persons executing said deed were the descendants and heirs of Antonio Baca, or that Antonio Baca was the son and heir of Luis Maria Cabeza de Baca.

6. The Court erred in admitting in evidence a certain deed executed by Guadalupe Mares de Sandoval and others, designated as defendant Wise's Exhibit "9," the offer of which [514] said deed was made as follows:

"I will offer in evidence this deed, which is dated the twenty-seventh day of August, 1913, between Guadalupe Mares de Sandoval and Meliton Mares, and others, children of Preciliana Baca de Mares, widow and children of Preciliana Baca, daughter of Juan Manuel Baca, who is the son of Antonio Baca."

The same objection was made to this deed as is set forth in assignment of error number five, which said objection is not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number five for a statement of said objection and wherein the Court erred in ad-

mitting said deed in evidence. Exception was duly taken.

7. The Court erred in admitting in evidence a certain deed executed by Martina M. Baca and others, designated as defendant Wise's Exhibit No. "10," the offer of which said deed was made as follows:

"Then we offer a deed dated the twenty-first day of August, 1913, between Martina M. Baca, widow of Ignacio Baca, and the children of Ignacio Baca, named Guillerina Baca and Eloisa Baca, said Ignacio Baca being a son of Jose Baca, who is a son of Juan Manuel Baca, who is a son of Antonio Baca."

The same objection was made to this deed as is set forth in assignment of error number five, which said objection is not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number five for a statement of said objection and wherein the Court erred in admitting said deed in evidence. Exception was duly taken.

8. The Court erred in admitting in evidence a certain deed executed by Vidal N. de Mares, and designated as defendant Wise's Exhibit No. "11," the offer of which said deed was made as follows:

"Now I will offer the original deed, because I did not have a certified copy of it—I did not get this—from some more of the descendants of Antonio [515] Baca. The deed is dated the thirtieth day of August, 1913, and is between Vidal N. de Mares, widow of Ines Mares, Vi-

talia, Santiago and other Mares, who are also the children and descendants, etc., of Antonio."

The same objection was made to this deed as is set forth in assignment of error number five, which said objection is not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number five for a statement of said objection, and wherein the Court erred in admitting said deed in evidence. Exception was duly taken.

9. The Court erred in admitting in evidence a certain deed executed by Marcos C. de Baca and designated as Defendant Wise's Exhibit number "12," the offer of which said deed was made as follows:

"I will offer in evidence a deed dated the seventeenth day of September, 1913, from Marcos C. de Baca to Joseph E. Wise and Jesse Wise, conveying the property mentioned in the preceding deeds. I will state, your Honor, that Marcos C. de Baca was the same grantee in all the deeds I have mentioned."

The same objection was made to this deed as is set forth in assignment of error number five, which said objection is not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number five for a statement of said objection, and wherein the Court erred in admitting said deed in evidence. Exception was duly taken.

10. The Court erred in admitting in evidence a certain deed executed by Teofila Baea and others,

and designated as Defendant Wise's Exhibit No. "27," the offer of which said deed was made as follows:

"I will offer in evidence a deed from Teofila Baca et al. to Marcos C. de Baca. This seems to be a deed from Teofila Baca to Marcos C. de Baca. I do not happen to remember about that. This deed is dated August 20, 1913. That is another one of the daughters of Antonio, which evidently I had omitted this morning."

[516]

The same objection was made to this deed as is set forth in assignment of error number five, which said objection is not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number five for a statement of said objection, and wherein the Court erred in admitting said deed in evidence. Exception was duly taken.

11. The Court erred in admitting in evidence a certain deed executed by Ciria Salazar, designated as Defendant Wise's Exhibit No. "28," the offer of which said deed was made as follows:

"I next offer in evidence a deed from Ciria Salazer to Joseph E. Wise and Jesse H. Wise, dated the eighth day of August, 1913."

The same objection was made to this deed as is set forth in assignment of error number five, which said objection is not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number five for a statement of said objection, and wherein the Court erred in ad-

mitting said deed in evidence. Exception was duly taken.

12. The Court erred in admitting in evidence certain statements of Marcos C. de Baca, as follows:

"Q. Mr. Baca, you have already stated that Prudencio Baca, who was a son of Luis Maria Baca, died in 1882, have you not? A. Yes, sir.

Q. Now, prior to that time did Prudencio Baca make any statements to you in regard to the relationship of Antonio Baca to Luis Maria Baca, deceased?

on the ground that it had already appeared in evidence that at the time of the alleged statements by Prudencio to Marcos Baca a controversy existed as to who were the children and descendants of Luis Maria Baca, among whom was the alleged Antonio, and that it did not appear that there was no controversy in this regard, at this time, and on the further ground that the [517] said Prudencio was one of the grantors of the plaintiffs, under whom they were claiming, and that the alleged declarations sought to be established, were made by him after he had parted with his title, and in derogation and disparagement of the title which he had conveyed, and upon the further ground that it appeared that the defendants Joseph E. Wise and Lucia J. Wise were claiming under the deeds of 1864 and 1871, and that the plaintiffs were claiming under said deeds; that in said deeds were recitals or covenants that the grantors therein, among whom was said Prudencio, were the owners in fee simple of said Baca Float No. 3, and had full right to sell the same, and that

the grantors were the sole heirs of Luis Maria Baca (the said alleged Antonio not being a grantor in said deeds), and that the said Joseph E. and Lucia J. Wise, claiming under said deeds, and under said Prudencio, were estopped as against said recitals and covenants, to deny as against said plaintiffs, the truth thereof. To which ruling of the Court, permitting the said Marcos Baca to testify in answer to said question, and other questions as to what said declarations were, the plaintiffs then and there duly excepted.

13. The Court erred in admitting in evidence certain statements of Marcos Baca, as follows:

“Q. Now, will you please state what Prudencio Baca said to you on the subject of the relationship of Antonio Baca to his father, Luis Maria Baca, at the conversation at Pena Blanca, 1873.”

The same objections to this evidence was made as are set forth in assignment of error number twelve, and which said objections are not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number twelve for a statement of said objections and wherein the Court erred in admitting said statements in evidence. Objection was duly made, overruled, and exception taken. [518]

14. The Court erred in admitting in evidence certain statements of Marcos Baca as follows:

“Q. Please state what Prudencio Baca said to you in 1873 at Pena Blanca in regard to who Antonio Baca was, and in regard to his relationship, if any, with Prudencio Baca himself, or Luis Maria Baca?

A. I was inquiring from him who the children of Luis Maria Baca were.

Q. Go on and state what he said.

A. He gave me the names, amongst them the name of Antonio, as the eldest child of Luis Maria.

Q. The eldest child? A. Yes, sir.

Q. Antonio Baca? A. Yes, sir."

To all of which the plaintiffs objected on the grounds set forth in assignment of error number twelve, and which said objections are not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number twelve for a statement of said objections and wherein the Court erred in admitting said statements in evidence. The objections were overruled and exceptions duly taken.

15. The Court erred in admitting in evidence certain statements of Marcos Baca as follows:

"Q. Now, you will please state the substance of that conversation, so far as it related to Antonio Baca."

To which the plaintiffs objected on the grounds set forth in assignment of error number twelve, and which said objections are not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number twelve for a statement of said objections and wherein the Court erred in admitting said statements in evidence. The objections were overruled, and exceptions duly taken.

16. The Court erred in admitting in evidence the testimony of Marcos Baca as follows:

"Q. Did you know a Manuel Baca, who was a son of Luis Maria Baca? A. Yes, sir.

Q. You have stated already you had a conversation with him in regard to Antonio?

A. Yes, sir. [519]

Q. Now, please state the conversation that took place with Manuel Baca at that time in regard to Antonio Baca."

To which the plaintiffs objected, on the grounds set forth in assignment of error number twelve, and which said objections are not, for the sake of brevity, here reported, and it is prayed that reference may be had to said assignment number twelve for a statement of said objections and wherein the Court erred in admitting said statements in evidence. The objections were overruled and exceptions duly taken.

17. The Court erred in admitting in evidence the testimony of Marcos Baca, as follows:

"Q. You said you were acquainted with Domingo Baca, a son of Luis Maria Baca?

A. Yes, sir.

Q. Please state what he said on the subject of Antonio Baca, the relationship of Antonio Baca and Don Luis Maria Baca?

To which the plaintiffs objected on the grounds set forth in assignment of error number twelve, and which said objections are not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number twelve for a statement of said objections and wherein the Court erred in admitting said statements in evidence, substituting herein the word "Domingo" for "Pruden-

cio." The objections were overruled and exceptions duly taken.

18. The Court erred in admitting in evidence the testimony of Marcos Baca, as follows:

"Now, in the conversation you had with Prudencio Baca was anything said in regard to whether or not Antonio Baca had any children?

A. Yes, sir.

Q. I am speaking now of the conversation of 1875. What did he say on that point?

To which the plaintiffs objected on the grounds set forth in assignment of error number twelve, and which said objections are not, for the sake of brevity, here repeated, [520] and it is prayed that reference may be had to said assignment number twelve for a statement of said objections and wherein the Court erred in admitting said statements in evidence. The objections were overruled and exceptions duly taken.

19. The Court erred in admitting the evidence and all thereof of Marcos Baca as to the declarations alleged to have been made to him by Prudencio, Manuel, Domingo and Tomas Baca, in that said declarations were hearsay as to pedigree, and, at the time they were alleged to be made, a controversy existed as to the children and the descendants of Luis Maria Baca, among whom was the alleged Antonio. The objections were overruled and exceptions duly taken.

20. The Court erred in not excluding the evidence and all thereof of Marcos Baca, as to the declarations alleged to have been made to him by Prudencio, Manuel, Domingo and Tomas Baca, in that

said declarations were hearsay as to pedigree, and, at the time they were alleged to be made, a controversy existed as to the children and the descendants of Luis Maria Baca, among whom was the alleged Antonio. The objections were overruled and exceptions duly taken.

21. The Court erred in rendering judgment for Joseph E. Wise and Margaret W. Wise as to 1/19 interest in Baca Float No. 3, in that the weight of the evidence was clearly against the existence of Antonio Baca, or that he was entitled to inherit or did inherit or that he left any heirs or that the persons alleged to be his heirs were such, and that such alleged heirs conveyed to the said Wises, and that there is no competent evidence in the record to support the judgment in this behalf.

22. The Court erred in admitting the evidence of Marcos Baca as to the declarations made by Prudencio, Manuel, Domingo and Tomas Baca in that each of the said persons had covenanted in the deed of 1864, signed by each and all of them, that they [521] were seized of Baca Float No. 3 in fee simple and had full right to convey the same, under which deed plaintiffs and the said Wises are grantees; that the alleged Antonio nor his alleged heirs were mentioned in said deed; that the said Prudencio, Manuel, Domingo and Tomas were estopped as against their grantees, plaintiffs herein, to deny the truth of said covenants; that the defendant, Joseph E. Wise, and the plaintiffs are grantees under said deed containing said covenants and claiming under said deed, and that the said Joseph E. Wise is es-

topped to deny or disprove the recitals or covenants in said deed, while claiming thereunder as against the plaintiffs.

23. The Court erred in admitting the evidence of Marcos Baca as to the declarations alleged to have been made to him as to Antonio Baca and his heirs by Prudencio, Manuel, Domingo, and Tomas Baca, in that the said Prudencio, Manuel, Domingo and Tomas Baca had theretofore conveyed the said property in this action involved and had covenanted in said conveyance that certain persons, not including the said Antonio and his heirs, were seized of full title in fee simple of said land; that the alleged declarations made by them to Marcos Baca after they had conveyed were mere voluntary statements not under oath and were directly opposite and contrary to their covenants in said deed, and were in disparagement of, and, if admitted, partially destroyed the title which they had conveyed and which is now held by the plaintiffs herein; that the plaintiffs are the grantees of the said Prudencio, Manuel, Domingo and Tomas Baca, claiming under and relying upon the deeds of 1864 and 71 and claiming under and relying upon the covenants made by them in said deeds; and that the declarations of the said grantors, made after their covenants, are repugnant to the covenants made by them and in disparagement of the title which they had conveyed, and are inadmissible and incompetent as against said grantees. [522]

24. The Court erred in admitting in evidence the alleged will of Luis Maria Baca, together with the petition of the executor attached thereto, in that the

same were irrelevant, immaterial and incompetent, and did not tend to prove any of the issues in the case, in this: That the alleged will and petition show that Luis Maria Baca had a deceased son, and did not show that said son was Antonio; that it appeared that said son had received advances, and was not entitled to inherit, and consequently was not one of the heirs of Luis Maria Baca, nor were his wife or children heirs; that the question of the right to inherit was referred to the courts, and that it does not appear that the adjudication on the right to inherit was in favor of the heirs of the alleged Antonio; that the sixth section of the Act of Congress of June 21, 1860, declared that it should be lawful for the heirs of said Luis Maria Baca, who made claim to the Las Vegas grant, to select certain land (of which the land in question here is a part) and that the heirs of the alleged Antonio, the grantors of the defendants Joseph E. and Margaret W. Wise, did not make claim to said land, or present any claim for same.

That the plaintiffs duly excepted to the admission of said evidence.

WHEREFORE, plaintiffs—appellants—pray that said decree, in so far as it adjudicates and quiets the title of an undivided one thirty-eight of the south half of said Baca Float No. 3 in Joseph E. Wise and a like amount in Margaret W. Wise, be reversed, and that said District Court for the District of Arizona, be ordered to enter a decree quieting the title of appellants as against said Joseph E. and Marga-

ret W. Wise, and all other parties to this action, in said one-nineteenth.

HARTWELL P. HEATH,
S. L. KINGAN,
Solicitors for Appellants. [523]

*In the United States District Court for the District
of Arizona.*

IN EQUITY—E-5 (TUCSON.)
CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY,
JAMES E. BOULDIN, JENNIE N. BOULDIN,
JOSEPH E. WISE, LUCIA J. WISE,
MARGARET W. WISE, JESSE H. WISE,
DAVID W. BOULDIN, HELEN LEE
BOULDIN, M. I. CARPENTER, PAT-
RICK C. IRELAND, IRELAND GRAVES,
ANNA R. WILCOX, ELDREDGE I. HURT,
and W. G. RIFENBURG,

Defendants.

**Bond on Appeal of Cornelius C. Watts and Dabney
C. T. Davis, Jr.**

KNOW ALL MEN BY THESE PRESENTS:
That we, Cornelius C. Watts and Dabney C. T.
Davis, Jr., of Charleston, West Virginia, as principals,
and Alfred S. Donau and A. J. Davidson, of
the county of Pima, State of Arizona, as sureties,
are held and firmly bound unto Joseph E. Wise and

Margaret W. Wise in the sum of One Thousand (\$1,000) Dollars, lawful money of the United States, to be paid to them and their respective executors, administrators and successors, to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and each of our heirs, executors and administrators firmly by these presents.

SEALED with our seals and dated this 1st day of November, 1915.

WHEREAS, the above-named Cornelius C. Watts and Dabney C. T. Davis, Jr., have appealed to the Circuit Court of Appeals of the Ninth Circuit to reverse a part and portion of the judgment of the District Court for the District of Arizona in the above-entitled cause, said part and portion of such judgment [524] being the part thereof that recognizes the ownership of an undivided one-nineteenth interest in and to the south one-half of what is commonly known as Baca Float No. 3, situate, in Santa Cruz County, Arizona, in Joseph E. and Margaret W. Wise, and being property involved in the above-entitled action, and being that part and portion of said judgment which does not recognize and quiet the title of the principals herein in and to the whole of the south one-half of the said parcel of land;

NOW THEREFORE, the condition of this obligation is such that if the above-named Cornelius C. Watts and Dabney C. T. Davis, Jr., shall prosecute their said appeal to effect and answer all costs if they fail to make good their plea, then this obliga-

tion shall be void, otherwise to remain in full force and effect.

CORNELIUS C. WATTS,
DABNEY C. T. DAVIS, Jr.,
By S. L. KINGAN,
Atty. in Fact,
A. J. DAVIDSON,
ALFRED S. DONAU.

State of Arizona,

County of Pima,—ss.

On the 1st day of November, 1915, personally appeared before me Alfred S. Donau and A. J. Davidson, respectively, known to me to be the persons described in and who duly executed the foregoing instrument as sureties, and respectively acknowledged, each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said Alfred S. Donau and A. J. Davidson, being respectively by me duly sworn, says, each for himself and not one for the other, that he [525] is a resident and householder of the said county of Pima, and that he is worth the sum of One Thousand (\$1,000) Dollars over and above his just debts and legal liability, in property not exempt from execution.

A. J. DAVIDSON,
ALFRED S. DONAU.

Subscribed and sworn to before me this 1st day of November, 1915.

G. H. LANGWORTHY,
Notary Public.

My commission expires Dec. 15, 1917.

APPROVED this 1st day of November, 1915.

WM. H. SAWTELLE,

Judge. [526]

*In the United States District Court for the District
of Arizona.*

IN EQUITY—E-5 (TUCSON).

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY, a
Corporation, et al.,

Defendants.

**Praecipe [Designating Additional Portions of
Record].**

Appellants, Cornelius C. Watts and Dabney C. T. Davis, Jr., hereby request that the following portions of the record in the above-entitled cause be incorporated in the transcript on the appeal of these appellants in this cause, in addition to those set forth in praecipe filed on behalf of appellants Joseph E. and Lucia J. Wise:

- (1) Assignments of error of Cornelius C. Watts and Dabney C. T. Davis, Jr.;
- (2) Bond on Appeal of Cornelius C. Watts and Dabney C. T. Davis, Jr.;
- (3) Stipulation that only one record be taken up and that it be deemed the record of all the parties.

Dated, at Tucson, Arizona, this 15th day of November, 1915.

HARTWELL P. HEATH,
S. L. KINGAN,

Attorneys for Cornelius C. Watts and Dabney C. T. Davis, Jr.

I hereby admit service on this . . . day of November, 1915, of the foregoing praecipe.

JOHN H. CAMPBELL,
Attorneys for the Bouldins.
J. D. MOCKAY,

Attorney for Intervenors, M. I. Carpenter, et al.

S. M. FRANKLIN,

Attorney for Joseph E. and Lucia J. Wise.

JAMES R. DUNSEATH,

Attorney for Jesse H. and Margaret E. Wise. [527]

[Petition of James E. Bouldin et al. for Appeal and
Order Allowing Appeal.]

*In the District Court of the United States, in and
for the District of Arizona.*

IN EQUITY—E-5 (TUCSON).

CORNELIUS C. WATTS and DABNEY C. T. DAVIS, Jr.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY,
JAMES E. BOULDIN, JENNIE N. BOULDIN, JOSEPH E. WISE, LUCIA J. WISE, JESSE H. WISE, DAVID W. BOULDIN,

HELEN LEE BOULDIN, M. I. CARPENTER, PATRICK C. IRELAND, IRELAND GRAVES, ANNA R. WILCOX, ELDREDGE I. HURT and W. G. RIFENBURG,
Defendants.

Now come the above-named defendants, James E. Bouldin, Jennie N. Bouldin, David W. Bouldin and Helen Lee Bouldin, in open court, at the time of the rendition and signing of the decree in the above-entitled cause, and conceiving themselves aggrieved by that portion of said decree that recognizes the title of the Defendants Joseph E. Wise and Margaret W. Wise to an undivided one thirty-eighth each of the tract or parcel of land, the title to which is sought to be quieted in said action, and also that portion of said decree which does not recognize and quiet the title of the said defendants in and to the whole of the north half of said tract or parcel of land, and the failure of said Court in not recognizing and quieting the whole of said north one-half of said tract of land in the said defendants, do hereby appeal from such portions of said decree to the Circuit Court of Appeals for the Ninth Circuit, and they pray that this appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said portions of said decree were made, duly authenticated, may be sent to said Circuit Court of Appeals.

JOHN H. CAMPBELL,
Solicitor for the Defendants James E. Bouldin,
Jennie N. Bouldin, David W. Bouldin and Helen
Lee Bouldin.

Dated at Tucson, Arizona, November 1, 1915.

And now, to wit, on November 1, 1915, it is allowed that the appeal be allowed as prayed for.

WILLIAM H. SAWTELLE,
Judge. [528]

*In the District Court of the United States for the
District of Arizona.*

IN EQUITY—E-5 (TUCSON).

CORNELIUS C. WATTS and DABNEY C. T.
DAVIS, Jr.,

Plaintiffs,

vs.

SANTA CRUZ DEVELOPMENT COMPANY,
JAMES E. BOULDIN, JENNIE N. BOULDIN,
JOSEPH E. WISE, LUCIA J. WISE,
MARGARET W. WISE, JESSE E. WISE,
DAVID W. BOULDIN, HELEN LEE
BOULDIN, M. I. CARPENTER, PATRICK
C. IRELAND, IRELAND GRAVES, ANNA
R. WILCOX, ELDREDGE I. HURT and W.
G. RIFENBURG,

Defendants.

Assignment of Errors [of James E. Bouldin et al.].

Come now the defendants, James E. Bouldin, Jennie N. Bouldin, David W. Bouldin and Helen Lee Bouldin, and file the following assignment of errors, upon which they will rely upon their prosecution of appeal in the above-entitled cause from so much of the decree made by this Honorable Court on the first day of November, 1915, as adjudicated that Joseph

E. Wise and Margaret W. Wise are respectfully the owners of an undivided one thirty-eighth interest and that said defendants are not the owners of the whole of the north one-half in Baca Float No. 3, being that certain tract of land situate in the County of Santa Cruz, State of Arizona, described as follows, to wit:

Commencing at a point one mile and a half from the base of the Salero Mountain in a direction North forty-five degrees East of the highest point of said mountain, running thence from said beginning point West twelve miles, thirty-six chains and forty-four links; thence South twelve miles, thirty-six chains and forty-four links; thence East twelve miles, thirty-six chains and forty-four links; and thence North twelve miles thirty-six chains and forty-four links to the place of beginning; according to the survey of Philip Contzen filed in the office of the Register and Receiver of the General Land Office for Arizona on or about December 14, 1914; said tract of land being known as Baca Float No. 3, and being third of the series of locations made on behalf of the heirs of Luis Maria Baca under the provisions of the Sixth Section of the act of Congress of June 21, 1860 (12 U. S. Stat. 71). [529]

1. The Court erred in adjudicating that, at the time of the commencement of the action, the title to the land described was and still is vested and hereby quieted in the defendant Joseph E. Wise to the extent of an undivided one thirty-eighth of the

whole, and in the defendant Margaret W. Wise to the extent of an undivided one thirty-eighth of the whole of said tract.

2. The Court erred in not adjudicating that the absolute fee-simple title to the said land was, at the time of the commencement of the action, and still was, vested and was by the decree quieted in the plaintiffs to the south half of said tract and in the defendant Jennie H. Bouldin to an undivided one-half of the north half of said tract, and in the defendants David W. Bouldin and Helen Lee Bouldin respectively to an undivided one-fourth of the north half of said tract.

3. The Court erred in adjudicating that the respective titles of the defendants Joseph E. Wise and Margaret W. Wise as adjudicated in the decree be and the same thereby were severally quieted in them severally against the respective claims of the respective parties to the action.

4. The Court erred in not adjudicating that neither the defendant Joseph E. Wise or the defendant Margaret W. Wise had any right, title, interest, claim or demand in or to, or incumbrance or lien upon, the tract or parcel of land particularly described, or any part or portion thereof.

5. The Court erred in admitting in evidence a certain deed executed by Juana L. Baca and others, and designated as Defendant Wise's Exhibit No. "8" the offer of which deed was made as follows:

We will offer in evidence a deed dated the twentieth day of August, 1913, between Juana L. Baca, widow of Jose Baca, and Precilana

Baca and others, who are recited in the deed as the widow and children of Jose Baca, who is a son of Juan Manuel Baca, who was the son of Antonio Baca, the deed being made to Maria C. de Baca. [530]

Objection was made by the defendants Bouldin, Cornelius C. Watts and Dabney C. T. Davis to the introduction in evidence of said deed upon the ground that the defendant Joseph E. Wise claims under the deed of 1864 and the deed of 1871, made by the heirs of Luis Maria Cabeza de Baca to John S. Watts, and is bound by the recitals and covenants contained in said deeds to the effect that the grantors in said deeds were the owners in fee simple of the aforesaid property, Baca Float No. 3, and had full right to convey the same, and were all of the heirs of the said Luis Maria Cabeza de Baca.

Which objections were thereupon overruled by the Court and the evidence admitted and exception duly taken.

In that the said Joseph E. Wise was claiming under the said deeds of 1864 and 1871, and the said Defendants Bouldin were claiming under the same deeds, and that the defendant Wise was estopped by reason of said recitals and covenants, as against the said Defendants Bouldin claiming under the same conveyances, to deny or controvert the said recitals and covenants, and for the further reason that there was no competent evidence that the persons executing said deed were the descendants and heirs of Antonio Baca, or that Antonio Baca was the son and heir of Luis Maria Cabeza de Baca.

6. The Court erred in admitting in evidence a certain deed executed by Guadalupe Mares de Sandoval and others, designated as Defendant Wise's Exhibit No. "9," the offer of which said deed was made as follows:

I will offer in evidence this deed, which is dated the twenty-seventh day of August, 1913, between Guadalupe Mares de Sandoval and Meliton Mares, and others, children of Preciliana Baca de Mares, widow and children of Preciliana Baca, daughter of Juan Manuel Baca, who is the son of Antonio Baca.

The same objection was made to this deed as is set forth in assignment of error number five, which said objection is not, [531] for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number five for a statement of said objections and wherein the Court erred in admitting said deed in evidence. Exception was duly taken.

7. The Court erred in admitting in evidence a certain deed executed by Martina M. Baca and others, designated as Defendant Wise's Exhibit No. "10," the offer of which said deed was made as follows:

Then we offer a deed dated the twenty-first day of August, 1913, between Martina M. Baca, widow of Ignacio Baca, and the children of Ignacio Baca, named Guillerina Baca and Eloisa Baca, said Ignacio Baca being a son of Jose Baca, who is a son of Juan Manuel Baca, who is the son of Antonio Baca.

The same objection was made to this deed as is set forth in assignment of error number five, which said objection is not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number five for a statement of said objection and wherein the Court erred in admitting said deed in evidence. Exception was duly taken.

8. The Court erred in admitting in evidence a certain deed executed by Vidal N. de Mares, and designated as Defendant Wise's Exhibit No. "11," the offer of which said deed was made as follows:

Now, I will offer the original deed, because I did not have a certified copy of it—I did not get this—from some more of the descendants of Antonio Baca. The deed is dated the thirteenth day of August, 1913, and is between Vidal N. de Mares, widow of Ines Mares, Vitalia, Santiago and other Mares, who are also the children and descendants, etc., of Antonio.

The same objection was made to this deed as is set forth in assignment of error number five, which said objection is not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number five for a statement of said objection, and wherein the Court erred in admitting said deed in evidence. Exception was duly taken. [532]

9. The Court erred in admitting in evidence a certain deed executed by Marcos C. de Baca and designated as Defendant Wise's Exhibit number "12," the offer of which said deed was made as follows:

I will offer in evidence a deed dated the seventeenth day of September, 1913, from Marcos C. de Baca to Joseph E. Wise and Jesse Wise, conveying the property mentioned in the proceeding deeds. I will state, your Honor, that Marcos C. de Baca was the same grantee in all the deeds I have mentioned.

The same objection was made to this deed as is set forth in assignment of error number five, which said objection is not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number five for a statement of said objection, and wherein the Court erred in admitting said deed in evidence. Exception was duly taken.

10. The Court erred in admitting in evidence a certain deed executed by Teofile Baca and others, and designated as Defendant Wise's Exhibit No. "27," the offer of which said deed was made as follows:

I will offer in evidence a deed fom Teofile Baca et al. to Marcos C. de Baca. This seems to be a deed from Teofile Baca to Marcos C. de Baca. I do not happen to remember about that. This deed is dated August 30, 1913. That is another one of the daughters of Antonio, which evidently I had omitted this morning.

The same objection was made to this deed as is set forth in assignment of error number five, which said objection is not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number five for a statement of

said objections and wherein the Court erred in admitting said deed in evidence. Exception was duly taken.

11. The Court erred in admitting in evidence a certain deed executed by Ciria Salasar, designated as Defendant Wise's Exhibit No. "28," the offer of which said deed was made as follows:

I next offer in evidence a deed from Ciria Salasar to Joseph E. Wise and Jesse H. Wise, dated the eighth day of August, 1913. [533]

The same objection was made to this deed as is set forth in assignment of error number five, which said objection is not, for the sake of brevity, here repeated, and it is prayed that reference may be had to said assignment number five for a statement of said objection and wherein the Court erred in admitting said deed in evidence. Exception was duly taken.

The Court erred in admitting in evidence certain statements of Marcos C. Baca, as follows:

Q. Mr. Baca, you have already states that Prudencio Baca, who was a son of Luis Maria Baca, died in 1882, have you not?

A. Yes, sir.

Q. Now, prior to that time did Prudencio Baca make any statements to you in regard to the relationship of Antonio Baca to Luis Maria Baca, deceased?

on the ground that it had already appeared in evidence that at the time of the alleged statements by Prudencio to Marcos Baca a controversy existed as to who were the children and descendants of Luis Maria Baca, among whom was the alleged Antonio,

and that it did not appear that there was no controversy in this regard, at this time, and on the further ground that the said Prudencio was one of the grantors of the defendants Bouldin, under whom they were claiming, and that the alleged declarations sought to be established, were made by him after he had parted with his title, and in derogation and disparagement of the title which he had conveyed, and upon the further ground that it appeared that the defendants Joseph E. Wise and Lucia J. Wise were claiming under the deeds of 1864 and 1871, and that the Defendants Bouldin were claiming under said deeds; that in said deeds were recitals or covenants that the grantors therein, among whom was said Prudencio, were the owners in fee simple of said Baca Float No. 3, and had full right to sell the same, and that the grantors were the sole heirs of Luis Maria Baca, (the said alleged Antonio not being a grantor in said deeds), and [534] that the said Joseph E. and Lucia J. Wise, claiming under said deeds, and under said Prudencio, were estopped as against said recitals and covenants, to deny as against said defendants Bouldin, the truth thereof. To which ruling of the Court, permitting the said Marcos Baca to testify in answer to said question, and other questions as to what said declarations were, the Defendants Bouldin then and there duly excepted.

13. The Court erred in admitting in evidence certain statements of Marcos Baca, as follows:

Q. Now, will you please state what Prudencio Baca said to you on the subject of the rela-